

BOARD OF PUBLIC WORKS

1978

#1

BOARD OF PUBLIC WORKS

July-December 1978

PAUL A. WIATRAK, CITY ENGINEER

*BPR*

*Re: Contracting Study*

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP 1/2/27/78  
(date)

*all BPR members*  
(referred to)

*blm*  
(referred by)

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: \_\_\_\_\_

\*Action requested no later than \_\_\_\_\_  
(date)

ROUTING	DATE	INITIAL
ACTION		
FILE		<input checked="" type="checkbox"/>
INFORMATION		
<i>Paw</i>		
		<i>MStaff</i>

DEC 27 10 11 AM '78  
SECRETARY TING JHEPPI

## Seattle City Council



John Miller  
President of the Council  
625-2451

George E. Benson  
Chairman  
Parks & Community  
Services Committee  
625-2441

Michael Hildt  
Chairman  
Urban Development &  
Housing Committee  
625-2443

Tim Hill  
Chairman  
Finance Committee  
625-2438

Paul Kraabel  
Chairman  
Water & Waste  
Management Committee  
625-2447

Randy Revelle  
Chairman  
Energy Committee  
625-2445

Dolores Sibonga  
Chairman  
Personnel & Property  
Management Committee  
625-2436

Sam Smith  
Chairman  
Public Safety &  
Justice Committee  
625-2455

Jeanette Williams  
Chairman  
Transportation  
Committee  
625-2453

December 22, 1978

Betty McFarlane  
Executive Secretary  
Board of Public Works  
City of Seattle

Dear ~~Ms. McFarlane:~~ *Betty*

We know that you are anxiously awaiting the results of our contracting study and we are pleased to inform you that the work on public improvements contracting is complete and the work on services contracting and goods, equipment, and supplies is on schedule.

Rather than issue our report in a piecemeal fashion as originally planned, we have decided to issue one report on all three phases. Our main reason for this change is that our preliminary conclusions and recommendations on public improvements contracting may be affected by the results of our work in services or goods and equipment contracting. We want our report to be as comprehensive and as complete as possible, before we circulate it for comment.

We appreciate your continuing interest in our study and will hopefully have the entire study to you for comment by the end of February.

Sincerely,

LAURAIN D. BREKKE  
Executive Director

LDB/ga

BPW

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

✓ December 21, 1978

To: Board of Public Works Members and  
Walter Hundley, Superintendent of Parks & Recreation

From: Betty L. McFarlane, Executive Secretary *BLM*

Re: Board of Public Works Rules and Regulations

Question: Should a majority of members and/or alternates make a quorum  
or 2 members plus 1 alternate?

January 3, 1979 at 9:00 a.m., the Board will discuss the attached Rules  
and Regulations which have been changed in accordance with new Ordinances  
passed this year which become effective 1/1/79. The Board will need  
to readopt the rules and file with the City Clerk.

BLM:wb

Att.

ROUTING	DATE	INITIALS
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FILE		✓
ACTION		
<i>(paw)</i>		

SEATTLE ENG DEPT  
DEC 22 10 20 AM '78

*RULES*

*Of The*

*Board of Public*

*Works*

*CITY OF SEATTLE*

*WASHINGTON*

\*

**MEMBERS:**

*Director of Engineering*  
*Superintendent of City Light*  
*Superintendent of Parks & Recreation*  
*Superintendent of Buildings*  
*Superintendent of Water*  
*Executive Secretary*

**NOTICE**

Notice is hereby given that the Rules of the Board of Public Works of the City of Seattle have been amended to read as follows, the same now being in full force and effect:

Rule 1. The regular meeting of the Board of Public Works shall be called at 9:00 a.m., on Wednesday of each week, unless said day be a legal holiday, in which event the meeting shall be held on the first business day prior thereto.

Rule 2. The Board shall annually, at the first meeting following the Mayor's appointment of the Chairman, elect a Vice-Chairman.

Rule 3. Special meetings may be held at any time upon the call of the Chairman, or in case of his absence or refusal to act, the Executive Secretary upon request of three members, who shall state in writing the reasons therefor, may call such special meeting.

Rule 4. Two members and one alternate shall constitute a quorum for the transaction of the business of the Board. The affirmative vote of two members and one alternate shall be required to carry a motion or to award a contract.

Rule 5. The chairman shall vote on all questions before the Board and on a roll call his name shall be called last.

Rule 6. The chairman shall preside over all meetings of the Board, provided that in the absence from the City or incapacity of the chairman, meetings of the Board shall be called to order and presided over by the Vice-Chairman.

Rule 7. For the purpose of expediting the work, the Board shall be divided into four standing committees, which shall investigate all matters referred to them by the Board and shall prepare reports on same. The Committees shall be constituted as follows:

*Street Vacation Committee:*

*Director of Engineering, Chairman  
Superintendent of Water  
Superintendent of Parks &  
Recreation*

*Street Naming Committee:*

*Superintendent of Buildings,  
Chairman  
Superintendent of Water  
Director of Engineering*

*Utilities & Franchise Committee:*

*Superintendent of City Light,  
Chairman  
Superintendent of Water  
Director of Engineering*

*Committee of the Whole:*

*All members on call.*

Rule 8. All final committee reports shall be made to the Board in writing. In making a final report, the committee shall return all records and papers pertaining to the question to the Executive Secretary.

Rule 9. The Regular Order of Business of the regular meetings shall be as follows:

1. Call to order--Approval of minutes of previous session.

2. Applications and Petitions.
3. Ordinances and Resolutions.
4. Communications.
5. Assessment Rolls.
6. Council Files.
7. Reports of Committees.
8. Unfinished Business.
9. Extensions of Time.
10. Opening of Bids.
11. Awarding of Contracts.
12. Plans and Specifications.
13. Acceptance of Contracts.
14. New Business.
15. Adjournment.

Rule 10. All requests and recommendations of the Board members for their respective Departments shall be made in writing to the Executive Secretary for presentation to the Board, all communications to be in duplicate, and be in the hands of the Executive Secretary no later than 5:00 p.m. of the Monday preceding the Board meeting.

Rule 11. All recommendations and requests from the Board departments must be endorsed by the Department Head before action is taken thereon by the Board.

Rule 12. Members of the Board shall not leave the City without first notifying the Executive Secretary as to their destination and time of return, and in no case shall a member be absent from the regular Board meetings unless excused by the Chairman.

Adopted by the Board of Public Works in regular session.

BETTY L. MCFARLANE,  
Executive Secretary, Board of Public  
Works Department.  
303 Seattle Municipal Building.

PROPOSED BOARD OF PUBLIC WORKS RULES AND REGULATIONS

CONTRACTS FOR PUBLIC IMPROVEMENTS: All public improvements to be made by contract shall be let to the lowest and best bidder. Before awarding any such contract the Board of Public Works shall publish a call in the official newspaper of the City for at least five consecutive days, inviting sealed bids for such improvement. A copy of the plans and specifications shall be at the time of the first publication of such call on file in the Office of the Executive Secretary of the Board, open to public inspection.

The call shall state generally the improvement to be made, and all bids shall be sealed and filed with the Executive Secretary on or before the day and hour named therein, which time shall be not less than four days after the last publication of said call.

All bids shall be accompanied by a certified check, payable to the order of the City Treasurer or a surety bond for a sum not less than five (5%) per cent of the amount of the bid, and no bid shall be considered unless accompanied by such check or bond.

At the time and place named such bids shall be publicly opened and read; no bid shall be rejected for informality, if it can be understood what is meant thereby. The Board shall proceed to determine the lowest and best bidder, and may let such contract to such bidder, or if all bids are deemed too high, they may reject all and readvertise, and in such case all checks shall be returned to the bidders; but if such contract be let, all checks shall be returned to the bidders except that of the successful bidder, which shall be retained until

a contract be entered into in accordance with such bid. If the said bidder fails to enter into such contract within ten days from the date upon which he/she is notified that he/she is the successful bidder, the said check or bond shall be forfeited to the City, and credited to the improvement and the Board shall readvertise for proposals for such work. Neither the Board nor the City Council may remit such forfeiture.

**IMPROVEMENTS MAY BE MADE BY CONTRACT OR BY DAY LABOR:** All local and other improvements as are prescribed by Ordinance may be made by contract to be let to the lowest and best bidder therefor, under the management of the Board of Public Works, or, in the Board's discretion, such improvement may be done under the management of the Board by day labor, if there is no conflict with Senate Bill 2143, in which event the Board shall direct the purchase of the necessary materials and supplies through the Purchasing Agent, who shall secure the same in compliance with specifications prepared by the Board and subject to their acceptance.

Bids may be received for all or any part of any proposed contract and no contract shall be sublet except for the furnishing of material without the previous consent of the Board of Public Works in writing.

**COMPLETION OF CONTRACT:** No improvement shall be deemed completed until the Board shall have filed with the City Clerk a statement declaring the same completed.

**MINIMUM WAGE TO BE PAID:** Every contractor and subcontractor performing any local or other improvement work for the City of Seattle shall pay or cause to be paid to his/her employees on such work or under such contract not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the State

where such labor and work is to be performed.

**PUBLIC WORK ON SUNDAY, HOLIDAYS AND AT NIGHT, PERMIT FOR:** No construction work shall be done by the City on any legal holiday or Sunday; nor shall any work be done on any such day, or after seven o'clock p.m. and before six o'clock a.m. of any other day, upon or over any street or other public place, except in case of emergency, upon written permit of the Board of Public Works, wherein the fact of such emergency, and the nature thereof, shall be specified.

**PUBLIC UTILITY CONSTRUCTION, PERMIT FOR:** No corporation or person shall construct any public utility facility in the City without first obtaining a permit from the Board of Public Works.

**CONTRACTORS' BONDS:** All contractors' performance bonds shall be approved as to form and as to sufficiency of sureties by the City Attorney.

**ASSIGNMENT OF CONTRACTS:** No contract for public work shall be assigned without the consent of the Board of Public Works, and of the sureties on the contractor's bond, and any assignment without such consent, except by operation of law, shall render the same null and void as to further performance without any act on the part of the City.

**DEFAULTING CONTRACTORS:** The Board of Public Works shall not enter into contract for public work with any person who within two years prior thereto shall have abandoned, surrendered or failed to complete any such contract in accordance with the plans and specification requirements.

BLM/jw

12-20-78

Bpw

Paul A. Wiatrak, City Engineer

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT  
MEMORANDUM

ROUTING	DATE	INITIAL
ACTION		
FILE		✓
INFORMATION		
		Paw
		A-CH/DJH
		LFR

December 14, 1978

To: Walter Hundley, Superintendent of Parks and Recreation

From: Betty L. McFarlane, Executive Secretary *BLM*

Re: Determining Lowest and Best Bidder

DEC 15 8 14 AM '78  
SEATTLE ENG DEPT

I have received your memo of December 5, 1978 asking questions regarding how a department determines lowest and best bidder.

You are correct in the understanding that a pre-award bidder information sheet need only be filled out upon request by the City after a bid opening. Prequalification takes place before bid opening.

As a general rule, projects will continue to be bid without prequalification. When it is determined to be appropriate in individual select cases, the department head will determine that, in his or her discretion, whether the project should be bid on a prequalification basis.

You are, also, correct in assuming that you may acquire advice from the City Attorney, as you normally do, when legal questions arise. However, if you follow the Board's procedures and list your reasons for finding a bidder nonresponsible when making your recommendation for award to the Board of Public Works, we can ask advice of the City Attorney if there is any question in this regard. It would be helpful if you first consulted with this Department on any questions of propriety for finding bidders nonresponsible prior to contacting the Law Department or submitting your award letter to the Board. This will cut down the number of calls going to the Attorney's Office and we can work the matter out between us in most cases.

The proposed language of the APWA specifications will be included on an interim basis in the Board's amendments to the most recent addition until a new supplement is published. Yes, this will ~~be~~ <sup>have</sup> the effect for all contracts awarded after January 1, 1979.

BLM:eas

cc: All Board Members

*BPA*

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

MEMORANDUM

December 13, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *blm*  
Re: Lowest and Best Bidders

All contract specifications to be awarded after January 1, 1979, must include wording that contracts will be awarded to the lowest and best bidder.

Please prepare all contract specifications accordingly.

BLM:jrn

- cc: Doug Howell, Engineering
- John Skommesa, Engineering
- Walter Hundley, Supt. of Parks and Recreation
- Don Harris, Parks and Recreation
- Ed Engel, Parks and Recreation
- Evelyn Larson, Parks and Recreation
- Robert Snyder, Building Department
- Bill Rashkov, Water Department
- John Hansen, Lighting Department
- Jack Fearey, Seattle Center
- Vivian Caver, Human Rights Department
- Roberta Standifer, Human Rights Department
- Willie Winston, Human Rights Department

SEATTLE ENG DEPT  
DEC 14 10 24 AM '78

ROUTING	DATE	INITIAL
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INFORMATION		
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AEM/DJH		
REN		

B.P.W.

Paul A. Wiatrak, City Engineer

**Seattle  
Board of Public Works**

Betty L. McFarlane, Executive Secretary  
Charles Royer, Mayor



Re: Appointment of Chairman of  
the Board of Public Works

✓ December 8, 1978

ROUTING	DATE	INITIAL
ACTION		
FILE	✓	
INFORMATION		
(Paw)		m. staff

Mr. Ned Dunn  
Community Service Representative  
Boards and Commissions  
609 Municipal Building  
Seattle, Washington 98104

Dear Mr. Dunn:

Just a reminder--the Mayor appoints a Chairman of the Board of Public Works, annually, at the end of each year for the following year. The Board of Public Works Ordinance, passed recently, names Board of Public Works Members as Superintendent of Water, Director of Engineering, Superintendent of Buildings, Lighting and Parks and Recreation. A Chairman should be named from among those members.

Yours truly,

BOARD OF PUBLIC WORKS

*Betty*  
Betty L. McFarlane  
Executive Secretary

BLM: eas

SEATTLE ENG DEPT  
DEC 22 10 20 AM '78

BPW

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

/ December 1, 1978

SEATTLE ENG DEPT  
DEC 5 7 27 AM '78

ROUTING	DATE	INITIAL
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FILE	✓	
INFORMATION		
PAW		
HEM	DJH	
	LFC	

To: All Board of Public Works Members

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Determining "Lowest and Best Bidder"

The Board of Public Works, in regular session September 27, 1978 concurred in the recommendation that a draft Supplement to the APWA Standard Specifications - 19th Edition be produced for review by all concerned, incorporating previously Board approved recommendations from departments. The following is submitted for your review prior to Board of Public Works' formal action on December 20, 1978 at 9:00 a.m. in Room 304.

I. Rerword Section 2-1.05 - Qualification of Bidders, as follows:

The Owner will evaluate all bids submitted, to determine lowest and best bid. Bidder must be qualified by experience, financing and equipment to do the work called for in the plans and specifications. Upon request of the Owner, a bidder whose bid is under consideration for award of a contract shall submit promptly to the Owner satisfactory evidence of qualifications, financial resources, construction experience and organization available for performance of the proposed contract. A "Pre-Award Bidder Information Statement" form will be bound in the specifications for that purpose.

Bidder shall furnish upon forms included for that purpose within the bid specifications, a statement of his/her capability to perform or provide the Owner with an acceptable Affirmative Action for Equal Employment Opportunity and/or Utilization of Minority and Women's Business Enterprises, and shall submit same along with bid proposal.

II. Section 2-1.06 - Disqualification of Bidders - add (k) through (p) to (a) through (j) listed in APWA Standard Specifications:

- (k) For any reason deemed proper, as determined from a pre-award evaluation of bidder's affirmative action record and capabilities regarding Equal Employment Opportunity and/or Utilization of Minority and Women's Business Enterprises.
- (l) Failure of a bidder, upon request of the Owner to submit a "Pre-Award Bidder Information Statement," as required in the specifications.
- (m) If the Owner's evaluation of "Pre-Award Bidder Information Statement" results in bidder being declared nonresponsible.

December 1, 1978

- (n) If the Owner's evaluation of bidder's proposed material/equipment and installed cost thereof results in the bidder's proposal being nonresponsible.
- (o) Failure of a bidder to meet requirements of the specifications.
- (p) The Owner reserves the right to reject any and all bids.

III. Section 3-1.01 - Award of Contract - reword as follows:

The award of contract, if it be awarded, shall be made within thirty (30) calendar days after the date of opening of bids, to the lowest and best bidder deemed responsible by the Owner. The successful bidder will be notified by letter mailed to the address shown on his/her proposal that the bid has been accepted and that he/she has been awarded the contract.

\*\*\*\*\*

SUMMARY: As a general rule, public works improvement contracts, except those of the Lighting Department (by State Law), will continue to be bid without prequalification of bidders; and the Board of Public Works and its member departments will use the above criteria adopted for evaluating lowest and best bidder.

If the bidder is found nonresponsible by the Administering Department, the Department will go to the next low bidder and so on until a responsible bidder is found. This will result in the lowest and best bid. Administering Departments should document the reasons for a bidder being declared nonresponsible and their recommendation for award letter to the Board of Public Works shall contain such information.

The City Attorney's Office stated in an opinion that judicial precedent defines "lowest and best" to mean the lowest bidder who at least minimally qualifies to perform the work contracted for.

The Board ruled that the option to prequalify remains, however. The attached draft minimum prequalification procedures and minimum questionnaire for determining qualification prior to bidding will be used on a case-by-case basis as determined by the Administering Department head involved. All advertisements in these cases will contain the following wording, "Plans and Specifications issued to Prequalified Bidders Only."

BLM:wb

Att.

cc: R. L. Snyder, Building Dept.  
Doug Howell, Engineering Dept.  
John Hansen, Lighting Dept.  
Bill Rashkov, Water Dept.  
Ed Engle, Evelyn Larson, Parks Dept.

Mayor Charles Royer  
City Council Audit Staff  
Human Rights Dept.  
Women's Rights Dept.  
O.M.B.

CITY OF SEATTLE

BOARD OF PUBLIC WORKS BID PROCEDURES AND CONDITIONS FOR PREQUALIFICATION OF BIDDERS

Before being furnished a bid proposal on any contract which requires prequalification of bidders, a prospective bidder shall submit to the City a standard form of questionnaire and financial statement, including a complete statement of financial ability and experience of such bidder in performing City public work. Such questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgement of deeds.

A prospective bidder who has not been qualified or from whom a supplemental questionnaire is due, may not be considered for qualification or given a bid proposal unless such bidder has submitted his prequalification questionnaire and financial statement, or supplements thereof, at least ten calendar days before the date fixed for opening bids on the contract on which such bidder desires to bid.

If two or more prospective bidders desire to prequalify and bid jointly as a joint venture on a single contract, each must have filed a questionnaire and financial statement and they must also file an agreement to joint venture such contract. If two or more prospective bidders desire to bid to jointly qualify and bid jointly as a joint venture on more than one contract, they must submit a joint questionnaire and financial statement and also an agreement to joint venture stating the number and types of contracts which they expect to joint venture. Any agreement to joint venture required to be filed hereunder shall be signed by each of the bidders. If any of the bidders is a corporation, the agreement must be accompanied by a resolution of the corporation authorizing such joint venture agreement and designating the officer who is authorized to sign such joint venture agreement or contract on behalf of such corporation.

If the City is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement, it may refuse to furnish a prospective bidder a bid proposal form and any bid proposal of such bidder shall be disregarded.

Prequalification shall not bar the City upon the opening of bids on any contract from determining that any bidder is not a responsible bidder insofar as performance of such contract is concerned.

BY ORDER OF THE BOARD OF PUBLIC WORKS in regular session \_\_\_\_\_.

CITY OF SEATTLE-DEPARTMENT OF \_\_\_\_\_

NOTICE TO PROSPECTIVE BIDDERS

for

\_\_\_\_\_  
Type of Work

TO: \_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

NOTICE IS HEREBY GIVEN to you that your application for designation as a prequalified bidder, for the performance of \_\_\_\_\_ for CITY OF SEATTLE, DEPARTMENT OF \_\_\_\_\_, has been reviewed and such designation is hereby approved/refused, as shown on attached sheet.

This prequalification form shall not be used for qualification purposes on other than City of Seattle Department of \_\_\_\_\_ work. This prequalification expires \_\_\_\_\_, 19\_\_\_\_.

CITY OF SEATTLE, DEPARTMENT OF \_\_\_\_\_

BY \_\_\_\_\_  
Title

CITY OF SEATTLE, DEPARTMENT OF \_\_\_\_\_

APPLICATION FOR CONTRACTOR PREQUALIFICATION

Contractors wishing to make application to the City of Seattle, Department of \_\_\_\_\_, for the designation as a prequalified bidder for \_\_\_\_\_, shall complete the following questionnaire and submit the information requested:

1. Name of applicant \_\_\_\_\_
2. Address of applicant \_\_\_\_\_ Zip \_\_\_\_\_
3. Telephone number of applicant (     ) - \_\_\_\_\_
4. If applicant is a corporation, state:
  - a. State of Incorporation \_\_\_\_\_
  - b. Whether the corporation has paid all current license fees to the State of Washington.  
\_\_\_\_\_
  - c. Name and address of registered agent \_\_\_\_\_  
\_\_\_\_\_
  - d. Names and addresses of officers of the corporation and their length of time with the corporation. Indicate by an \* those authorized to sign contracts.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - e. Number of years corporation has been in business \_\_\_\_\_
5. If applicant is a partnership, state:
  - a. Name and address of all partners \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. Length of time partnership has been in business \_\_\_\_\_
6. If applicant is a sole proprietorship, how long have you been in business?  
\_\_\_\_\_
7. Number of years applicant has performed the type of work for which he <sup>she</sup> is bidding \_\_\_\_\_
8. Indicate on the attached forms the classes of work for which you are seeking prequalification, for electrical or general construction work \_\_\_\_\_  
\_\_\_\_\_
9. Attach a general resume setting forth applicant's experience, technical qualifications and organizational ability to perform the proposed construction.
10. Attach a list of your supervisory personnel and their qualifications and years of experience, list the number and type of craftsmen available.
11. Attach a list of equipment available for work showing the age and location of the equipment.
12. Have any of the projects you have undertaken in the past five years resulted in partial or final settlement of contract by arbitration or litigation in the courts? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, list names of clients and projects.

Client	Project
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

13. List name of bonding company, and name, address and telephone number of agent.  
\_\_\_\_\_  
\_\_\_\_\_

14. What is the maximum amount of work, expressed in dollars, which you consider you are capable of undertaking in terms of surety bonding capability?

a. Single project: \$ \_\_\_\_\_

b. All projects in progress simultaneously: \$ \_\_\_\_\_

15. Set forth the name, address and telephone number of applicant's bank, including the branch and officer of the bank to be contacted for financial reference. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Attach your most recent fiscal year's balance sheet.

17. Set forth the names and addresses of three (3) clients who will act as references.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. Attach a list of clients served over the last three (3) years including their names, addresses, location of the jobs performed, and the amounts of the larger contracts, (if any work performed as a subcontractor, list name of contracting agency and prime contractor).

19. Attach copy of registration or other evidence that applicant is a Washington State registered contractor under the provisions of R.C.W. 18.27.

20. Affirm that applicant will pay wages and benefits for craftsmen employed on work which prevails in the locality of the work as determined by the State of Washington, Department of Labor and Industries.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. Affirm that applicant will comply with all city, state and federal government regulations regarding non-discrimination of employment practices; that applicant will take affirmative action as required by applicable regulation to assure equal employment opportunity in all aspects of employment irrespective of race, color, sex, age, creed or national origin.

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SUBMITTED this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_\_

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Title

Attachment: Affidavit

STATE OF WASHINGTON )  
 ) ss.  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, before me, the under  
signed, a Notary Public in and for the State of Washington, duly commissioned  
and sworn, personally appeared \_\_\_\_\_ and  
\_\_\_\_\_, to me known to be the \_\_\_\_\_  
and \_\_\_\_\_,  
respectively of \_\_\_\_\_ the  
corporation that executed the foregoing instrument, and acknowledged the said  
instrument to be the free and voluntary act and deed of said corporation, for  
the uses and purposes therein mentioned, and the oath stated that, \_\_\_\_\_  
authorized to execute the said instrument, and that the  
statements contained in said instrument and in the attachments thereto are true and  
correct to the best of \_\_\_\_\_ knowledge.

Witness my hand and official seal hereto affixed the day and year first  
above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, before me,  
the undersigned, a Notary Public in and for the State of Washington, duly commissioned  
and sworn, personally appeared before me \_\_\_\_\_  
and \_\_\_\_\_, to me known to be the individual \_\_\_\_\_  
described in and who executed the within instrument, and acknowledged that  
\_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary  
act and deed, for the uses and purposes therein mentioned, and on oath stated  
that \_\_\_\_\_ authorized to execute said instrument and that  
the statements contained in said instrument and in the attachments thereto are  
true and correct to the best of \_\_\_\_\_ knowledge.

WITNESS my hand and official seal hereto affixed the day and year first  
above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at: \_\_\_\_\_

BOARD OF PUBLIC WORKS  
PRE-AWARD BIDDER INFORMATION

1. Bidder has been in business continuously from \_\_\_\_\_  
(Year)

2. Bidder has had experience in work comparable with that required under the proposed contract:

as a prime contractor, for \_\_\_\_\_ years

as a subcontractor, for \_\_\_\_\_ years

3. Following is a partial list of the work the Bidder has completed in the last five years which is similar in character and in magnitude to that required in the proposed contract:

<u>Year</u>	<u>Owner</u>	<u>Location</u>	<u>Contract Amount</u>
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4. Furnish references for information concerning the work listed above:

<u>Name</u>	<u>Title</u>	<u>Address</u>
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5. List the supervisory personnel to be employed by the bidder and available for work on this project (project manager, principal foreman, superintendents and engineers):

<u>Name</u>	<u>Title</u>	<u>Years of Experience</u>
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6. Furnish a detailed resume of the qualifications, previous employers and experience of the Project Manager proposed to be assigned to this project:

7. Furnish a list of equipment owned which is available for use on the proposed work as required:

<u>Type of Equipment</u>	<u>Size or Capacity</u>	<u>Present Location</u>
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8. The following subcontractors are proposed to be employed for portions of the construction:

<u>Name</u>	<u>Address</u>	<u>Construction</u>	<u>Percent of Total Construction</u>
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9. List all projects undertaken in the last five years which have resulted in partial or final settlement of the contract by arbitration or litigation in the courts:

<u>Name of Client and Project</u>	<u>Contract Amount</u>	<u>Total Claims Arbitrated or Litigated</u>	<u>Amount of Settlement of Claims</u>
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10. Enclose a copy of Bidder's last yearly financial statement or balance sheet showing assets, liabilities, and net worth. List bank or banks for reference for financial responsibility of the Bidder:

<u>Name of Bank</u>	<u>Address</u>
---------------------	----------------

Bpw

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

✓ November 27, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *Blm*  
Re: Board Meeting - December 27, 1978  
and Submittal of Agenda Items for  
January 3, 1979 Meeting

Due to the holidays and many being out of the City during that time, the Board will not have a meeting on Wednesday, December 27, 1978. The Board will meet again in regular session on Wednesday, January 3, 1979.

*Pls.* Schedule projects accordingly.

Submittal of agenda items for the meeting on January 3 must be to the Board of Public Works by 5:00 p.m., Friday, December 29, 1978.

Thank you and Happy Holidays!

BLM/jw

cc: Doug Howell/John Skommesa, Engineering  
Don Harris/Evelyn Larson, Parks and Recreation  
John Hansen, Lighting  
William Rashkov, Water  
Bob Snyder, Buildings  
Roberta Standifer/Willie Winston, Human Rights  
Citizens' Service Bureau  
Mayor's Office

NOV 28 6 57 AM '78

SEATTLE ENG DEPT

ROUTING	DATE	INITIAL
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INFORMATION		
<i>(Paw)</i>		
AEM/DJH		
M STAFF		

BPW.  
srs;ph  
11-7-78

✓  
ORDINANCE 107785

1  
2  
3  
4 AN ORDINANCE establishing the Board of Public Works, and  
prescribing its duties.

5 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

6 Section 1. The purpose of the Board of Public Works  
7 is to ensure that all public work activities and contracts for  
8 public works projects awarded by the City are developed and  
9 carried out in a manner consistent with the City Charter and  
10 applicable law, and to perform other duties assigned by ordinance.

11 Section 2. (a) There shall be a Board of Public Works  
12 composed of five members who shall be the heads of the following  
13 City departments: Engineering, Water, Building, City Light and  
Parks and Recreation.

14 (b) The Superintendents of the Lighting, Building and  
15 Water Departments and the Director of Engineering shall serve  
16 on the Board of Public Works for terms coincident with their  
17 terms as heads of City departments. The Director of Parks and  
18 Recreation shall serve on the Board of Public Works for a four-  
19 year term; provided, that the first term of the Director of  
20 Parks and Recreation as a member of the Board of Public Works  
shall expire on December 31, 1979.

21 (c) Members of Board of Public Works may be removed  
22 as Board members, and as Department heads while serving on the  
23 Board, only for cause, by the Mayor, by filing a statement of  
24 reasons constituting such cause with the City Council. Cause  
25 shall be substantial, not frivolous; shall relate to the Board  
26 member's or department head's performance of public duties; and  
shall reflect upon that person's fitness to perform the duties

1 of his/her office. Announced or actual refusal to follow the  
2 written official policies of the Mayor or adopted policies of  
3 the City Council constitutes cause. Upon the resignation of  
4 any member of the Board in response to the Mayor's request, the  
5 Mayor shall file with the City Council a statement of his or her  
6 reasons for making such request.

7 (d) The Mayor shall appoint the Chairperson of the Board  
8 of Public Works.

9 Section 3. Pursuant to the Administrative Code (Ordinance  
10 102228), the Board of Public Works may adopt whatever rule it  
11 deems useful for the conduct of its business.

12 Section 4. Duties of the Board of Public Works include:

13 (a) Awarding and ensuring that all contracts for public  
14 works projects awarded by the City are developed and carried out  
15 in a manner consistent with the City Charter and applicable law.

16 (b) Ensuring that all public improvements to be made  
17 pursuant to a contract by the City are awarded to the lowest and  
18 best bidder.

19 (c) Ensuring that persons employed pursuant to a contract  
20 for public works are paid at not less than the prevailing rate  
21 of pay required by any applicable law, or on a contract financed  
22 with grant assistance, by any applicable regulations, and in any  
23 event not less than the prevailing rate of pay for City employees  
24 performing like duties.

25 (d) Performing functions contemplated by City ordinances  
26 relating to streets, public places, and waterways, including  
27 Ordinance 90047 (the Street Use Ordinance), Ordinance 91910 (the  
28 Traffic Code), and Ordinance 87983 (the Harbor Code), each as  
now or hereafter amended or replaced by a

1 successor ordinance, and by City ordinances granting franchises  
2 or permits for the use of public places, currently existing or  
3 enacted from time to time.

4 (e) Administering contracts for the collection of garbage  
5 and solid waste and for the development and operation of  
6 disposal sites.

7 (f) Performing other functions assigned by ordinance or  
8 by the City.

9 Section 5. The Board shall appoint an Executive Secretary.  
10 The Executive Secretary shall appoint, supervise and control  
11 employees of the Board of Public Works, subject to personnel  
12 ordinances and rules of the City. The Executive Secretary shall  
13 keep the Board's office at the place where the meetings of the  
14 Board are held, which shall be kept open during business hours,  
15 and at such other hours as the Board may direct. The Executive  
16 Secretary shall keep a complete record of all the proceedings of  
17 the Board, and shall perform such other duties as the Board may  
18 direct.

19 Section 6. Board members may delegate their authority  
20 to vote on matters coming before the Board.

21 Section 7. The Board appointed pursuant to the provisions  
22 of this ordinance shall assume care, custody and control of all  
23 of the property, records, books, papers, equipment, offices,  
24 rights and responsibilities of the Board of Public Works created  
25 by City Charter Article VII and in existence immediately prior  
26 to the effective date of this ordinance.

27 The staff of the Board of Public Works immediately prior  
28 to the effective date of this ordinance is hereby reconstituted

1 as the staff of the Board of Public Works created pursuant to  
2 this ordinance. The appointment of each staff member, including  
3 the Executive Secretary, is ratified and confirmed, and such  
4 person's employment shall be deemed to have continued without  
5 interruption of service, and no loss of any accrued service  
6 credits, vacation time, sick leave, compensation time or any  
7 other benefit shall occur as a result of this transfer from a  
8 Board of Public Works defined by Charter to a Board of Public  
9 Works defined by this ordinance.

10 Section 8. The effective date of this ordinance shall be  
11 January 1, 1979.

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(To be used for all Ordinances except Emergency.)

Section 9. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 6 day of November, 1978,  
and signed by me in open session in authentication of its passage this 6 day of  
November, 1978.

*John Miller*  
President of the City Council.

Approved by me this 15 day of November, 1978.  
*Charles Rayer*  
Mayor.

Filed by me this 15 day of November, 1978.

Attest: *E. L. King*  
City Comptroller and City Clerk.

(SEAL)

Published.....

By *Rayne McGuire*  
Deputy Clerk.

BPW

PAUL A. WIATRAX, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

MEMORANDUM

November 9, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *Blm*  
Re: BPW Approved Sample Format for Circulating Sheet

The attached Circulation Sheet for BPW Plans and Specifications should include Grading Approval section at bottom. All departments of the Board are to use similar form.

BLM:wb  
Att.

SEATTLE ENG DEPT  
NOV 13 7 37 AM '78

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INFORMATION		
<i>PAW</i>		
<i>AEH/DTH</i>		
		<i>REN</i>

SEATTLE ENGINEERING DEPARTMENT

FOR BOARD OF PUBLIC WORKS APPROVAL ON \_\_\_\_\_

CIRCULATION SHEET TO ACCOMPANY PLANS AND SPECIFICATIONS

Comments of the members of the Board of Public Works composing the standing committee on the attached Plans and Specifications

for \_\_\_\_\_

by \_\_\_\_\_

Drawing No. \_\_\_\_\_

Department	Reviewed By	Department Head	Date	Comments
City Engineer				
Supt. of Water				
Supt. of Light				
Supt. of Parks and Recreation				
Supt. of Bldgs.				
Dept. of Human Rights				
Board of Public Works				

In making comments please use the terms "Approved," "Opposed," and "Letter." If the word "Letter" is written, it signifies that the member is submitting a letter on the matter, and the letter should be attached.

Plans and Specifications Reviewed and Approved for BPW circulation.

Pre-Construction Project Engineer \_\_\_\_\_ Date \_\_\_\_\_

Construction Project Engineer \_\_\_\_\_ Date \_\_\_\_\_

Operations District Supervisor \_\_\_\_\_ Date \_\_\_\_\_

GRADING APPROVAL

- Grading Not Involved
- Grading Exempt per Supt's Ruling No. 21-78
- Grading Exempt per Ordinance (Section 7, Exemption No. \_\_\_\_\_)
- Grading Permit Issued/Pending (Copy Attached)
- Grading Exempt per Supt's Ruling No. \_\_\_\_\_
- Project Located Outside City

Building Dept. *Concurrence*

*BPW*

PAUL A. WIATRAK, CITY ENGINEER

*Re: BPW Ord.*

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP

*11/3/78*  
(date)

*All BPW Members*  
(referred to)

*Blm*

(referred by)

\_\_\_\_ Please prepare reply for the Executive Secretary's signature on office stationery.

\_\_\_\_ Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

\_\_\_\_ Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: *Monday the City*

*Council should*  
*address the BPW Ord*  
*and Board member*  
*dept. ordinances. No*  
*action was taken by*  
*Committee on attached.*

\*Action requested no later than \_\_\_\_\_ (date)

*except to delete in its*  
*entirety def. of pub. works*

ROUTING	DATE	INITIAL
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<i>(Paw)</i>		

NOV 6 7 23 AM '78

SEATTLE ENG DEPT

## Your City, Seattle

Office of the Mayor  
Charles Royer, Mayor



November 2, 1978

Honorable Paul Kraabel, Chairman  
Water and Waste Management Committee  
Seattle City Council

Subject: Board of Public Works Ordinance

Dear Paul:

At its last meeting, the City Council voted to send the Board of Public Works legislation back to committee for redrafting. I was pleased that the Council dropped the "for cause removal" wording from ordinances reestablishing four City departments, because that wording was not consistent with the Charter. But I was disappointed by the move to fix, by ordinance, the precise membership of the Board.

The purpose of the Board of Public Works Charter change was to establish department head accountability to the Mayor and to give the Mayor more flexibility in forming the Board. The language worked out earlier in committee was a reasonable accommodation between executive direction and the Council's desire to give some shape to the Board's composition; that language required that at least three of five Board members be department heads from a list of eight major departments.

As you know, I have committed to retaining the same departments on the Board of Public Works until a joint OMB-Council staff study of contracting was complete. It doesn't make sense to change the Board now, only to change it again in six months.

But the new provision fixing the Board's membership by ordinance is a bad principle, and I hope the Council will reconsider. A joint Council-OMB-Mayor's office committee worked for months to shape an ordinance setting a basic framework for the Board, a framework that will last even when some of the Board's functions change. Since one purpose of the Charter change was to establish more flexibility in the actual composition of the Board, it is inconsistent with that change to constrict the unit's possible membership. We should set the policy now that the directors of Seattle Center, the Department of Community Development, and the Human Rights Department may serve on the Board, and that the Mayor may choose Board members from a list of various department heads.

Honorable Paul Kraabel  
November 2, 1978  
page two

Therefore, I urge the Council to return to the committee's earlier language, and enact the following as Section 2 (a) of the Board of Public Works ordinance:

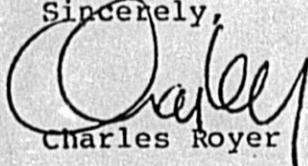
"Section 2. (a) There shall be a Board of Public Works composed of five members, at least three of whom shall be heads of one of the following City departments: Engineering, Water, Building, City Light, Parks and Recreation, Community Development and Human Rights."

I also suggest the following technical change in the last clause of Section 1 in order to maintain flexibility of management of projects done by public corporations:

"... public works include public improvements within of the City. ~~or-upon-property-belonging-to-or-under-the-control-of the-City.~~

Thank you for your consideration on this matter.

Sincerely,

  
Charles Royer

CR:hsj

B.P.W.

PAUL A. WIATRAC, CITY ENGINEER

Seattle Board of Public Works

Betty L. McFarlane, Executive Secretary  
Charles Royer, Mayor

Re: 1979 Budget

ROUTING	DATE	INITIAL
ACTION		
FILE		
INFORMATION		
Paw		



✓ November 2, 1978

SEATTLE ENG DEPT  
NOV 2 9 44 AM '78

Mr. Casey Jones, Director  
Office of Management and Budget  
Attention: Steve Williams  
City of Seattle

Dear Mr. Jones:

The City Council Audit Staff has requested that we reevaluate our 1979 budget and that we consider cutting \$5,000 from the operating areas of the budget. Since 90% of our budget is salaries and the operating expenses are at a minimum, below the level of actual need, we believe it is undesirable to cut any items from the budget as submitted. After I advised them that it would be impossible to carry out our duties with a cut, they suggested one employee be on half a work day only. We have only two budgeted positions to type the work generated by the Department Head and Assistant, and this alternative is equally impossible.

This is a public office; we must continue to provide the services for which we are responsible. Public works administration is extensive and our responsibilities also cover a wide spectrum of other matters, and public service activities. We have five departments with which we must coordinate the work of the Board of Public Works, and in a lot of cases many others; and it is necessary to maintain sufficient supplies, materials and funds to duplicate items which must be circulated for recommendation and/or input prior to Board action. It is also necessary for us to have funds in the budget to notify the public of Board meetings, hearings and actions. We must, by law, publish all rules and regulations which affect citizens, agencies and others, and notify when others are affected. These publications are required by Ordinance 102228, the Administrative Code.

We also are self-supporting by the fees we charge for administration of public works, which are deposited in the General Fund and more than cover our budget costs.

Mr. Casey Jones  
November 2, 1978  
Page 2

Present staff budgeted consists of two Administrative Specialists and one Assistant Secretary, besides the Department Head. We operate on a bare minimum budget, which is very carefully administered during the year. Under the circumstances, we remain very firm in our belief that to carry out our duties, we must maintain the original budget amount approved by O.M.B. and the Mayor.

Yours very truly,

BOARD OF PUBLIC WORKS

*Betty L. McFarlane*

Betty L. McFarlane  
Executive Secretary

BLM/jw

cc: Mayor Charles Royer  
Board of Public Works Members

BPW

PAUL A. WIATRAK, CITY ENGINEER

ROUTING	DATE	INITIAL
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<i>(Paw)</i>		
<i>M Staff</i>		

*Re: BPW Draft Ord.*

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP *11/1/78*  
(date)

*All BPW Members*  
(referred to)

*Blm*  
(referred by)

\_\_\_\_ Please prepare reply for the Executive Secretary's signature on office stationery.

\_\_\_\_ Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

\_\_\_\_ Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: *The City Council met in Comm. of the whole last Mon. and full Council will vote on this next Mon. (lined areas are new.)*

\*Action requested no later than *new.*  
(date)

*cc: Supt of Parks & Rec.*

NOV 2 7 41 AM '78

SEATTLE ENG DEPT

RECEIVED  
NOV 1 11 15 AM '78  
BOARD OF PUBLIC WORKS

ORDINANCE \_\_\_\_\_

AN ORDINANCE establishing the Board of Public Works, and prescribing its duties.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The purpose of the Board of Public Works is to ensure that all public work activities and contracts for public works projects awarded by the City are developed and carried out in a manner consistent with the City Charter and applicable law, and to perform other duties assigned by ordinance. For purposes of this ordinance, public works include public improvements within the City or upon property belonging to or under the control of the City.

Section 2. (a) There shall be a Board of Public Works composed of five members who shall be the heads of the following City departments: Engineering, Water, Building, City Light and Parks and Recreation.

(b) Members of the Board of Public Works shall be appointed by the Mayor and confirmed by a majority of the City Council and shall serve for two-year terms; provided, that two members of the original board appointed under this ordinance shall serve for one-year terms.

(c) Members of Board of Public Works may be removed as Board members, and as Department heads while serving on the Board, only for cause, by the Mayor, by filing a statement of reasons constituting such cause with the City Council. Cause shall be substantial, not frivolous; shall relate to the Board member's or department head's performance of public duties; and shall reflect upon that person's fitness to perform the duties

1 of his/her office. Announced or actual refusal to follow the  
2 written official policies of the Mayor or adopted policies of  
3 the City Council constitutes cause. Upon the resignation of  
4 any member of the Board in response to the Mayor's request, the  
5 Mayor shall file with the City Council a statement of his or her  
6 reasons for making such request.

7 (d) The Mayor shall appoint the Chairperson of the Board  
8 of Public Works.

9 Section 3. Pursuant to the Administrative Code (Ordinance  
10 102228), the Board of Public Works may adopt whatever rule it  
11 deems useful for the conduct of its business.

12 Section 4. Duties of the Board of Public Works include:

13 (a) Awarding and ensuring that all contracts for public  
14 works projects awarded by the City are developed and carried out  
15 in a manner consistent with the City Charter and applicable law.

16 (b) Ensuring that all public improvements to be made  
17 pursuant to a contract by the City are awarded to the lowest and  
18 best bidder.

19 (c) Ensuring that persons employed pursuant to a contract  
20 for public works are paid at not less than the prevailing rate  
21 of pay required by any applicable law, or on a contract financed  
22 with grant assistance, by any applicable regulations, and in any  
23 event not less than the prevailing rate of pay for City employees  
24 performing like duties.

25 (d) Performing functions contemplated by City ordinances  
26 relating to streets, public places, and waterways, including  
27 Ordinance 90047 (the Street Use Ordinance), Ordinance 91910 (the  
28 Traffic Code), and Ordinance 87983 (the Harbor Code), each as  
now or hereafter amended or replaced by a

1 successor ordinance, and by City ordinances granting franchises  
2 or permits for the use of public places, currently existing or  
3 enacted from time to time.

4 (e) Administering contracts for the collection of garbage  
5 and solid waste and for the development and operation of  
6 disposal sites.

7 (f) Performing other functions assigned by ordinance or  
8 by the City.

9 Section 5. The Board shall appoint an Executive Secretary.  
10 The Executive Secretary shall appoint, supervise and control  
11 employees of the Board of Public Works, subject to personnel  
12 ordinances and rules of the City. The Executive Secretary shall  
13 keep the Board's office at the place where the meetings of the  
14 Board are held, which shall be kept open during business hours,  
15 and at such other hours as the Board may direct. The Executive  
16 Secretary shall keep a complete record of all the proceedings of  
17 the Board, and shall perform such other duties as the Board may  
18 direct.

19 Section 6. Board members may delegate their authority  
20 to vote on matters coming before the Board.

21 Section 7. The Board appointed pursuant to the provisions  
22 of this ordinance shall assume care, custody and control of all  
23 of the property, records, books, papers, equipment, offices,  
24 rights and responsibilities of the Board of Public Works created  
25 by City Charter Article VII and in existence immediately prior  
26 to the effective date of this ordinance.

27 The staff of the Board of Public Works immediately prior  
28 to the effective date of this ordinance is hereby reconstituted

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as the staff of the Board of Public Works created pursuant to  
this ordinance. The appointment of each staff member, including  
the Executive Secretary, is ratified and confirmed, and such  
person's employment shall be deemed to have continued without  
interruption of service, and no loss of any accrued service  
credits, vacation time, sick leave, compensation time or any  
other benefit shall occur as a result of this transfer from a  
Board of Public Works defined by Charter to a Board of Public  
Works defined by this ordinance.

Section 8. The effective date of this ordinance shall be  
January 1, 1979.

BPW

PAUL A. WIATRAK, CITY ENGINEER

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP

10/26/78  
(date)

All BPW Members

(referred to)

Blm

(referred by)

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: This will be  
discussed City Council  
Oct. 27 at 8:30

ROUTING	DATE	INITIAL
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INFORMATION		
(PAW)		
EMW		

\*Action requested no later than \_\_\_\_\_ (date)

cc: Supt. of Parks & Rec.

OCT 27 7 59 AM '78

SEATTLE ENG DEPT

RECEIVED  
OCT 23 11 15 AM '78  
BOARD OF PUBLIC WORKS

SRS:PH  
10-24-78

ORDINANCE \_\_\_\_\_

AN ORDINANCE establishing the Board of Public Works, and prescribing its duties.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The purpose of the Board of Public Works is to ensure that all public work activities and contracts for public works projects awarded by the City are developed and carried out in a manner consistent with the City Charter and applicable law, and to perform other duties assigned by ordinance. For purposes of this ordinance, public works include public improvements within the City or upon property belonging to or under the control of the City.

Section 2. (a) There shall be a Board of Public Works composed of five members, at least three of whom shall be heads of City departments chosen from among the following departments: Engineering, Water, Building, City Light, Parks and Recreation, Community Development, Human Rights and Seattle Center.

(b) Members of the Board of Public Works shall be appointed by the Mayor and confirmed by a majority of the City council and shall serve for two-year terms; provided, that two members of the original board appointed under this ordinance shall serve for one-year terms.

(c) Members of Board of Public Works may be removed as such, for cause, by the Mayor, by filing a statement of reasons with the City Council. Upon the resignation of any member of the Board in response to the Mayor's request, the Mayor shall file with the City Council a statement of his or her reasons for making such request.

(d) The Mayor shall appoint the Chairperson of the Board of Public Works.

Section 3. Pursuant to the Administrative Code (Ordinance 102228), the Board of Public Works may adopt whatever rule it deems useful for the conduct of its business.

Section 4. Duties of the Board of Public Works include:

(a) Awarding and ensuring that all contracts for public works projects awarded by the City are developed and carried out in a manner consistent with the City Charter and applicable law.

(b) Ensuring that all public improvements to be made pursuant to a contract by the City are awarded to the lowest and best bidder.

(c) Ensuring that persons employed pursuant to a contract for public works are paid at not less than the prevailing rate of pay required by any applicable law, or on a contract financed with grant assistance, by any applicable regulations, and in any event not less than the prevailing rate of pay for City employees performing like duties.

(d) Performing functions contemplated by City ordinances relating to streets, public places, and waterways, including Ordinance 90047 (the Street Use Ordinance), Ordinance 91910 (the Traffic Code), and Ordinance 87983 (the Harbor Code), each as now or hereafter amended or replaced by a successor ordinance, and by City ordinances granting franchises or permits for the use of public places, currently existing or enacted from time to time.

(e) Administering contracts for the collection of garbage and solid waste and for the development and operation of disposal sites.

(f) Performing other functions assigned by ordinance or by the City.

Section 5. The Board shall appoint an Executive Secretary. The Executive Secretary shall appoint, supervise and control employees of the Board of Public Works, subject to personnel ordinances and rules of the City. The Executive Secretary shall keep the Board's office at the place where the meetings of the Board are held, which shall be kept open during business hours, and at such other hours as the Board may direct. The Executive Secretary shall keep a complete record of all the proceedings of the Board, and shall perform such other duties as the Board may direct.

Section 6. Board members shall not delegate their authority to vote on matters coming before the Board.

Section 7. The Board appointed pursuant to the provisions of this ordinance shall assume care, custody and control of all of the property, records, books, papers, equipment, offices, rights and responsibilities of the Board of Public Works created by City Charter Article VII and in existence immediately prior to the effective date of this ordinance.

The staff of the Board of Public Works immediately prior to the effective date of this ordinance is hereby reconstituted as the staff of the Board of Public Works created pursuant to this ordinance. The appointment of each staff member is ratified and confirmed, and such person's employment shall be deemed to have continued without interruption of service, and no loss of any accrued service credits, vacation time, sick leave, compensation time or any other benefit shall occur as a result of this transfer from a Board of Public Works defined by Charter to a Board of Public Works defined by this ordinance.

Section 8. The effective date of this ordinance shall be January 1, 1979

SRS:PH  
10-24-78

ORDINANCE

AN ORDINANCE establishing the Department of Engineering and prescribing the duties of the Director of Engineering.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. (a) There shall be an Engineering Department, the head of which shall be the Director of Engineering.

(b) The Director of Engineering shall be appointed by the Mayor and confirmed by a majority of the City Council, and shall be subject to reappointment and reconfirmation every four years; Provided, that the City Engineer appointed pursuant to Charter Article VII prior to its 1977 amendment, and serving immediately prior to the effective date of this ordinance shall serve as the first Director of Engineering pursuant to the provisions of this ordinance until December 31, 1980.

(c) The Director of Engineering may be removed from office for cause by the Mayor by the filing of a statement of reasons with the City Council.

Section 2. Pursuant to the Administrative Code (Ordinance 102228), the Director of Engineering may adopt whatever rule he or she deems useful for the conduct of the Department's business.

Section 3. Under the direction of the Mayor, the duties of the Director of Engineering include:

(a) Making engineering surveys, maps, profiles, plans, specifications, estimates and reports as required by the City.

(b) Laying out, directing and supervising the construction of public works required by the City within the City and on property belonging to or controlled by the City, except as otherwise provided by ordinance placing such responsibility in another department.

(c) Superintending, managing, constructing, repairing, maintaining, cleaning and controlling bridges, wharves, streets, gutters, sidewalks, sewers and drains and solid waste facilities of the City, subject to the Street Use Ordinance (90047).

(d) Enforcing and implementing City ordinances, contracts and rules that relate to the Engineering Department.

(e) Appointing, supervising and controlling the officers and employees of the Engineering Department subject to personnel ordinances and rules of the City.

(f) Appointing and consulting on all engineering matters with an assistant who is a professional engineer having at least 10 years experience, unless the Director possesses those qualifications.

(g) Managing, controlling, operating and maintaining the municipal sewerage utility system.

(h) Managing, controlling, operating and maintaining the municipal solid waste utility.

(i) Performing other duties as directed by the City.

Section 4. The Department of Engineering heretofore established by Charter Article VII prior to its 1977 amendments shall become the Engineering Department established pursuant to the provisions of this ordinance.

All of the records, books, papers, properties, equipment, offices, rights, and responsibilities of the Department heretofore created by charter are transferred to the department established by this ordinance.

The appointment of each employee of the Engineering Department heretofore established by Charter is ratified and confirmed as an appointment to the Engineering Department established pursuant to the provisions of this ordinance, and such employment shall be deemed to be continuous and

without interruption of service, and no employee shall suffer any loss of accrued service credit, vacation time or any other benefit, on account of the transfer from a department created by charter to the department created by this ordinance.

Section 5. The effective date of this ordinance shall be January 1, 1979.

section 5. (30 day ending)

DRAFT

srs:ph  
10-24-78

ORDINANCE \_\_\_\_\_

AN ORDINANCE establishing the Building Department and prescribing the duties of the Superintendent of Buildings.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. (a) There shall be a Building Department, the head of which shall be the Superintendent of Buildings.

(b) The Superintendent of Buildings shall be appointed by the Mayor and confirmed by a majority of the City Council, subject to reappointment and reconfirmation every four years.

(c) The Superintendent of Buildings may be removed from office for cause by the Mayor by filing of a statement of reasons with the City Council.

Section 2. Pursuant to the Administrative Code (Ordinance 102228), the Superintendent of Buildings may adopt whatever rule he or she deems useful for the conduct of the department's business.

Section 3. Under the direction of the Mayor, the duties of the Superintendent of Buildings include:

(a) Enforcing building ordinances of the City, including but not limited to provisions of the Building Code, the Housing Code, and the Zoning Ordinance.

(b) Enforcing City ordinances, contracts, and rules which relate to the Building Department.

(c) Managing, controlling and maintaining an inventory of lands and buildings of the City, except Parks, Library, City Light and Water Department property, and street and alley rights of way, sewer and solid waste utility property.

(d) Constructing and maintaining municipal buildings.

7

(e) Appointing, supervising and controlling the officers and employees of the Building Department, subject to personnel ordinances and rules of the City.

(f) Appointing and consulting on all matters of structural strength and design an assistant who is a structural engineer or architect who has five years experience in the practice of his/her profession, or who is a skilled building craftsman who has five years responsible supervisory experience in design, construction or maintenance of buildings, unless the Superintendent possesses such qualifications.

(g) Performing other duties as directed by the City.

Section 4. The Building Department heretofore established by Charter Article VII shall become the Building Department established pursuant to the provisions of this ordinance. All of the records, books, papers, properties, equipment, offices, rights and responsibilities of the Department heretofore created by Charter are transferred to the department established by this ordinance.

The appointment of each and every employee of the Building Department heretofore established by Charter is ratified and confirmed as an appointment to the Building Department established pursuant to the provisions of this ordinance, and such employment shall be deemed to be continuous and without interruption of service, and no employee shall suffer any loss of accrued service credit, vacation time, sick leave, compensation time, or any other benefit, on account of the transfer from a department created by charter to a department created by this ordinance.

Section 5. The effective date of this ordinance shall be January 1, 1979.

ORDINANCE \_\_\_\_\_

AN ORDINANCE establishing the City Light Department and prescribing the duties of the Superintendent of City Light.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. (a) There shall be a City Light Department, consisting of the municipal light and power system, the head of which shall be the Superintendent of City Light.

(b) The Superintendent of City Light shall be appointed by the Mayor and confirmed by a majority of the City Council, subject to reconfirmation every four years; provided, that the Superintendent of Lighting appointed pursuant to Charter Article VII prior to its 1977 amendment, and serving immediately prior to the effective date of this ordinance, shall serve as the first Superintendent of City Light pursuant to the provisions of this ordinance until December 31, 1979.

(c) The Superintendent of City Light may be removed from office for cause by the Mayor by the filing of a statement of reasons with the City Council.

Section 2. Pursuant to the Administrative Code (Ordinance 102228), the Superintendent of City Light may adopt whatever rule he or she deems useful for the conduct of the department's business.

Section 3. Under the direction of the Mayor, the duties of the Superintendent of City Light include:

(a) Managing, controlling, operating and maintaining the municipal light and power system and related facilities.

(b) Enforcing and implementing City ordinances, contracts, and rules which related to the City Light Department.

(c) Appointing, supervising and controlling all officers and employees of the City Light Department, subject to personnel ordinances and rules of the City.

(d) Making maps, surveys, profiles, plans, specifications, estimates and reports in connection with the City Light Department as directed by the City.

(e) Laying out, directing, constructing and supervising all public works of the City Light Department.

(f) Performing other duties as directed by the Mayor.

Section 4. The Department of Lighting heretofore established by Charter Article VII shall become the Department of City Light established pursuant to the provisions of this ordinance.

All of the records, books, papers, properties, equipment, offices, rights and responsibilities of the Department heretofore created by Charter are transferred to the department established by this ordinance.

The appointment of each and every employee of the City Light Department heretofore established by Charter is ratified and confirmed as an appointment to the City Light Department established pursuant to the provisions of this ordinance, and such employment shall be deemed to be continuous and without interruption of service, and no employee shall suffer any loss of accrued service credit, vacation time, sick leave, compensation time, or any other benefit, on account of the transfer from a department created by Charter to a department created by this ordinance.

Section 5. The effective date of this ordinance shall be January 1, 1979.

Section 6. (30 day ending)

SRS:PH  
10-24-78

ORDINANCE

AN ORDINANCE establishing the Water Department and prescribing the duties of the Superintendent of Water.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. (a) There shall be a Water Department consisting of the municipal water system, the head of which shall be the Superintendent of Water.

(b) The Superintendent of Water shall be appointed by the Mayor and confirmed by a majority of the City Council.

(c) The Superintendent of Water may be removed from office for cause by the Mayor by the filing of a statement of reasons with the City Council.

Section 2. Pursuant to the Administrative Code (Ordinance 102228), the Superintendent of Water may adopt whatever rule he or she deems useful for the conduct of the department's business.

Section 3. Under the direction of the Mayor, the duties of the Superintendent of Water include:

(a) Operating, maintaining, managing and controlling the municipal water system and related facilities.

(b) Enforcing and implementing City ordinances, contracts and rules which relate to the Water Department.

(c) Appointing, supervising and controlling officers and employees of the Water Department, subject to personnel ordinances and rules of the City.

(d) Performing other duties as assigned by the Mayor.

Section 4. The Water Department heretofore established by Charter Article VII shall become the Water Department established pursuant to the provisions of this ordinance.

All of the records, books, papers, properties, equipment, offices, rights and responsibilities of the Department heretofore created by Charter are transferred to the department established by this ordinance.

The appointment of each and every employee of the Water Department heretofore established by Charter is ratified and confirmed as an appointment to the City Light Department established pursuant to the provisions of this ordinance, and such employment shall be deemed to be continuous and without interruption of service, and no employee shall suffer any loss of accrued service credit, vacation time, sick leave, compensation time, or any other benefit, on account of this transfer from a department created by charter to a department created by this ordinance.

Section 5. The effective date of this ordinance shall be January 1, 1979.

P.D.G.

PAUL A. WIATRAK, CITY ENGINEER

Seattle Board of Public Works

Betty L. McFarlane, Executive Secretary  
Charles Royer, Mayor



Re: Board of Public Works

September 27, 1978

ROUTING	DATE	INITIAL
ACTION		
FILE		✓
INFORMATION		
		Paul
		M. Staff

SEP 29 7 46 AM '78

SEATTLE ENG DEPT

Mr. Walter R. Hundley  
Superintendent of Parks and Recreation  
City of Seattle

Dear Walt:

The City Attorney has verbally advised Paul A. Wiatrak, Chairman of the Board of Public Works, that the Superintendent of Parks and Recreation is no longer a member of the Board and has not been since the Charter was amended by a vote of the public on November 8, 1977.

There is no need, therefore, for you to attend meetings of the Board of Public Works, unless you deem it desirable in a particular instance. Ordinance No. 96453 still requires your department to go through the Board of Public Works when public improvements are contemplated which relate to the Parks Department. The Ordinance says, in part, Section 8, "Supervise, under the direction of the Board of Public Works, all public works construction contracts, service contracts, leases, and permits pertaining to the Parks and Recreation System, in accordance with City ordinances and rules adopted from time to time by the Board of Public Works." The Board will also continue to circulate other matters to you which involve your interest as Superintendent of Parks.

Circulation of plans and specifications pertaining to Parks Department projects, should be circulated to the Board of Public Works' member departments as accomplished in the past, and brought to the Board for final consideration and action. All consultant contracts for design of public works projects should also continue to be sent to the Board of Public Works for approval.

Mr. Walter R. Hundley  
September 27, 1978  
Page 2

Walt, the Board has appreciated your support and assistance in the past (especially those meetings attended above and beyond the call of duty after November, 1977), and will miss your participation in future Board meetings. We are happy, however, that we will continue to see you on a regular basis as a department head, working for the City of Seattle.

Very truly yours,

BOARD OF PUBLIC WORKS

*Betty L. McFarlane*

Betty L. McFarlane  
Executive Secretary

BLM/jw

cc: Mayor Charles Royer  
All Board of Public Works Members  
City Council  
City Attorney  
Office of Management  
and Budget

B. P. W.

Paul A. Wiatrak, City Engineer

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT  
MEMORANDUM

✓ September 18, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *Blm*  
Re: Board of Public Works Proposed Rules and Regulations

I recommend that the Board readopt rules and regulations as per green card and since there are changes in the present charter and a new Board of Public Works ordinance will authorize the Board to set rules and regulations for carrying out its responsibilities, I recommend the Board adopt the attached which was taken from the old charter section on the Board of Public Works.

This is forwarded for your investigation, report, and recommendation as soon as possible.

BLM: eas

Attachment

SEP 19 7 52 AM '78  
SEATTLE ENG DEPT

ROUTING	DATE	INITIAL
ACTION		
<i>att</i> PAW		
FILE	✓	
INFORMATION		

BPW

Paul A. Niatrak, City Engr.  
attn. Doug Howell

ROUTING	DATE	INITIAL
ACTION		
FILE	✓	
INFORMATION		
(Paw)		
AEM/DJH		
LFC		

Eval. of  
 Re: Lowest +  
 Best  
 Bidder  
 Board of Public Works  
 Office of the Executive Secretary  
 Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP ✓ 9/18/78  
 (date)

All BPW members, HRD, OMB,  
 (referred to)  
 OWR, City Council Audit Staff  
 Blm  
 (referred by)

\_\_\_\_ Please prepare reply for the Executive Secretary's signature on office stationery.

\_\_\_\_ Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

\_\_\_\_ Forwarded for your investigation, report, and recommendation.

\_\_\_\_ Forwarded for your information and files.

X Other: I have scheduled  
 this matter for BPW discussion  
 9/27 at 10:15 a.m. in Room 304.

In the meantime, if representatives  
 of depts. etc. desire to meet with  
 me on the subject there will be  
 a meeting in my office 9/21 at  
 10:00 a.m. in Room 303.

\*Action requested no later than \_\_\_\_\_  
 (date)

Bob Royer  
 CC: Mayor's Office

SEP 19 10 06 AM '78  
 SEATTLE ENG. DEPT

BOARD OF PUBLIC WORKS

1978

#2

September 18, 1978

EXECUTIVE SECRETARY'S PROPOSED BOARD OF PUBLIC WORKS'  
CRITERIA FOR DETERMINING  
LOWEST AND BEST BIDDER AND/OR  
PREQUALIFICATION OF BIDDER

BOARD DEPARTMENTS' RECOMMENDATIONS:

City Light - Feels it is the exception that the "best" bid is not the "low" bid. Recommends that rather than requiring that the information be submitted with all bids at bid opening, Instructions to Bidders of all specifications should be modified to include the provision that upon the Board's request, the low bidder shall submit to the Board qualification information about the bidder for evaluation by the Board to determine in the exceptional case if the low bid is, or is not, the "best" bid. Form entitled "Preaward Bidder Information Sheet" should be bound in all specifications.

Under DISQUALIFICATION OF BIDDERS

In addition to the Executive Secretary's proposal, the Lighting Department recommends the addition of the following subparagraphs:

- (k) Failure of a bidder to submit a "Pre-Award Bidder Information," wholly or in part.
- (l) Evaluation of "Pre-Award Bidder Information" results in the Bidder being declared non-responsible.
- (m) Evaluation of Bidder's proposed material/equipment and installed cost thereof results in the Bidder's proposal being non-responsible based on substituted material/equipment being substandard to that specified.

Section 2-1.06 of the Standard Specifications, 10th Edition, should be further amended to set forth the recourse a bidder may have if declared non-responsible.

Water Department - Recommends a system of prequalification be used rather than a cumbersome system of post-qualification.

City Engineer - Summarized Cornell Law Quarterly ... "the ability to furnish bond and show financial responsibility by themselves is insufficient to determine 'lowest and best, etc.' within the meaning of the term."

An awarding authority must show criteria used in investigating and determining lowest and best bidder when not awarding to the low bidder. Based upon that, there are two things awarding authority must do in order to make a valid award to the lowest and best bidder who may not be the lowest dollar bidder:

- 1) determine responsibility of the bidders, and
- 2) determine which of the responsible bidders has submitted the lowest bid.

This would determine the "lowest and best bidder."

There are advantages and disadvantages to prequalification, and Engineering believes it is premature to establish prequalification procedures before Phase II of the Board of Public Works Ordinance is completed late next year.

Engineering Department recommends:

- 1) The Board adopt a minimum prequalification procedure for contractor evaluation;
- 2) A minimum questionnaire be developed;
- 3) The following minimum modification be made to the Standard Specifications:
  - (a) Sec. 2-1.06  
Disqualification of Bidders, item (j) -  
Adopt as proposed by the Executive Secretary;

(b) Sec. 3-1.01

Award of Contract -

Amend the first sentence of paragraph one to read as follows:

"The award of contract, if it be awarded, shall be made within thirty (30) days after the date of opening bids, to the lowest and best bidder."

HRD - Recommends under QUALIFICATION OF BIDDERS, add:

"Bidder shall also furnish upon forms included for that purpose within the bid specifications, a statement of their capability to perform or provide the City with an acceptable affirmative action for equal employment opportunities and/or utilization of minority/women business enterprises."

Under DISQUALIFICATION OF BIDDERS, add:

"Unsatisfactory Performance Record, regarding good faith efforts in A/A-EEO-WMBE.

A bidder should be disbarred for unacceptable past performance in EEO-A/A-WMBE.

Prequalification of Bidders should be done prior to obtaining bid proposal."

OWR - Recommends additions to DISQUALIFICATION list:

"History of past, proven discrimination complaints lodged with HRD or OWR.

History of failure to abide by A/A plans and pledges and reporting obligations, while previously under contract.

Failure to submit the required acceptable A/A pledge with bid."

Parks - Agrees with Executive Secretary's modified wording, but suggests:

- 1) more specific criteria for deciding that a contractor is unqualified in areas (d) and (i).
- 2) some language that addresses disqualification for "inadequate personnel."

Executive Secretary's comments on above:

I recommend the Board:

- 1) Agree with City Light
- 2) Agree with Engineering Department
- 3) Agree with additions recommended by OWR and HRD,

which would result in adopting criteria for evaluating lowest and best bidder with option to prequalify if determined appropriate; making changes to City Light's Pre-Award Bidder Information Sheet so that it may be used by all departments and included in all specifications.

BLM/jw

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

July 12, 1978

To: All Board Members  
From: Betty L. McFarlane, Executive Secretary *Blm*  
Re: Determining "Lowest and Best Bidder"

I suggest the following modified APWA Standard Specifications 10th Edition wording be included in Specifications for Public Works Projects when a new Board of Public Works Ordinance is passed requiring contracts to be awarded to lowest and best bidder and the amendment be made a part of the City Supplement to that already approved 10th Edition.

QUALIFICATION OF BIDDERS

Bidder must be qualified by experience, financing and equipment to do the work called for in the plans and specifications. Bidder shall furnish upon a form included for that purpose within the bid specifications, a statement of his construction experience and his general ability to perform the work contemplated, and shall submit same along with his bid proposal.

The Board of Public Works will evaluate all bids submitted to determine lowest and best bid. Upon request of the Board, a bidder whose bid is under consideration for award of a contract shall submit promptly to the Board satisfactory evidence of financial resources, his construction experience and his organization available for performance of the proposed contract.

DISQUALIFICATION OF BIDDERS

The Board of Public Works in its discretion may reject any and all bids for any reason. A bidder may be determined not responsible and his proposal rejected for a number of reasons, i.e.:

- (a) More than one proposal on the same project from a bidder submitted under the same or different names.
- (b) Evidence of collusion with any other bidder or bidders. Participants in such collusion shall be disqualified from submitting bids on any further work.
- (c) If a bidder is not qualified for the work involved or to the extent of his bid.

All Board Members  
July 12, 1978  
Page 2

- (d) Unsatisfactory performance record, judged from the standpoint of conduct of work, workmanship, or progress, as shown by past or current work for the Owner.
- (e) Uncompleted work, whether for the Owner or otherwise, which might hinder or prevent the prompt completion of the work bid upon.
- (f) Failure to pay or settle bills for labor or materials on any former or current contracts.
- (g) If the bidder has previously defaulted in the performance of or failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract.
- (h) Any other inability, financial or otherwise, to perform the work.
- (i) A bidder not authorized to do business in the State of Washington.
- (j) For any other reason deemed proper as determined from a pre-award survey of bidders' capability to perform or provide the City with an acceptable affirmative action for equal employment opportunities and/or utilization of minority/women business enterprises.

Also, attached is a section from Bid Procedures and Conditions Standard Specifications, State of Washington, 1974 which can be reworded to adapt to City's needs. This can be used for prequalification of bidders when deemed necessary.

I would appreciate your review, comments and recommendations on the above proposed wording and prequalification requirements as soon as possible so that we may be ready for the change in bid evaluation when the new Ordinance is passed. Anyone listed below is also invited to submit a recommendation.

BIM:wb

cc: Mayor Charles Royer  
O.M.B.  
City Attorney  
City Council  
Council Audit Staff

1-02

Bid Procedures and Conditions

1-02 BID PROCEDURES AND CONDITIONS

1-02.1 Prequalification of Bidders.

Before being furnished a bid proposal on any contract a prospective bidder shall submit to the Commission a standard form of questionnaire and financial statement, including a complete statement of financial ability and experience of such bidder in performing state-highway, road or other public work. Such questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds and shall be submitted once a year and at such other times as the Commission may require.

A prospective bidder who has not been qualified or from whom a supplemental questionnaire is due, may not be considered for qualification or given a bid proposal unless such bidder has submitted his prequalification questionnaire and financial statement, or supplements thereof, at least seven calendar days before the date fixed for opening bids on the contract on which such bidder desires to bid.

If two or more prospective bidders desire to prequalify and bid jointly as a joint venture on a single contract, each must have filed a questionnaire and financial statement and they must also file an agreement to joint venture such contract. If two or more prospective bidders desire to bid to jointly qualify and bid jointly as a joint venture on more than one contract, they must submit a joint questionnaire and financial statement and also an agreement to joint venture stating the number and types of contracts which they expect to joint venture. Any agreement to joint venture required to be filed hereunder shall be signed by each of the bidders. If any of the bidders is a corporation, the agreement must be accompanied by a resolution of the corporation authorizing such joint venture agreement and designating the officer who is authorized to sign such joint venture agreement or contract on behalf of such corporation.

The Commission shall qualify a bidder as to the type of work and the amount of work for which a bidder is prequalified. The Commission may reduce the amount for which a bidder is prequalified or withdraw prequalification if the Commission feels that such reduction or withdrawal is justified because of outstanding work the bidder has under contract, whether with the State or not, or because of unsatisfactory performance on a prior or current State contract. If the Commission is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement, it may refuse to furnish a prospective bidder a bid proposal form and any bid proposal of such bidder shall be disregarded. Such refusal shall be conclusive unless appeal therefrom to the Superior Court of Washington County be taken within five (5) days, which appeal shall be heard summarily within ten (10) days after the same is taken and on five (5) days' notice thereof to the Commission, ~~by~~ <sup>BEARD</sup>. Prequalification shall not bar the Commission, upon the opening of bids on any contract, from determining that any bidder is

Bid Procedures and Conditions

1-02

not a responsible bidder insofar as performance of such contract is concerned.

When submitting a bid, it is the responsibility of the Contractor to determine that the amount of his bid plus the amount of outstanding work with the State does not exceed the amount of his prequalification amount. If the amount of a bid submitted by a bidder in addition to the amount of any outstanding work the bidder has under contract with the State, would exceed the amount of the bidder's prequalification, the Commission may determine that the bidder is not a responsible bidder insofar as performance of such contract is concerned and may not award the contract to the bidder.

1-02.2 Plans and Specifications.

Informational copies of plans and specifications will be placed on file in the Office of the District Engineers of the Department, in the Office of the County Engineer in the county in which the work is situated and the chapter offices of the Associated General Contractors of America, at Seattle, Spokane, Tacoma and Portland.

Plans and specifications may be obtained from the Director of Highways at Olympia, Washington, by payment of the amount set forth in the call for bids. Payment of the fee shall accompany a request for plans. If such fee is paid by check, it shall be payable to the State Treasurer-Department of Highways.

On special projects, a refundable deposit may be required in lieu of the fee specified above to assure a return of such copies of plans, plans and specifications and after the return of which the amount of said deposit will be made. The requirements for and the price and special provisions required will be included in the call for bids. Plans and special provisions, after award of contract, will be issued on the following basis:

General Contractor	No. of Sets	Cost
Revised Plans (11" x 17") and accompanying special provisions	10	No cost and furnished automatically upon award.
Revised Plans (11" x 17") and accompanying special provisions	10	No cost, furnished only upon request on projects where the plan sheets number more than 100.
Large Plans (22" x 36") and accompanying special provisions	1	No cost and will be furnished only upon request.
Large Plans (22" x 36") and accompanying special provisions	1	No cost and will be furnished only upon written request on projects where plan sheets, number more than 100.
For Contractors and Suppliers Revising Plans (11" x 17") and accompanying special provisions	1	No cost and will be furnished upon request by the prime contractor for an approved subcontractor or material supplier.

Additional Plans to General Contractor and Others Outside the Department: Plans and specifications will be charged at the current rates with a minimum charge of \$1. per set. Payment may be made upon receipt of billing.

State at Wash 1978

BPW  
9/1

✓ September 1, 1978

Re: Lowest and Best - The Executive Secretary's  
Memo dated July 12, 1978

Honorable Board of Public Works  
Seattle, Washington

Gentlemen:

This Department recommends that until the joint Executive Legislative review of present City contracting is complete only a minimum amount of changes should be made to the current award procedures and Standard Specifications. Changes made now may have to be revised again in only a few short months.

As you know the Mayor has proceeded to implement the Board of Public Works Charter Amendment in three phases:

- (1) Establish Board departments by ordinance
- (2) Review present City contracting and recommend improvements
- (3) Include the Board and Board departments in a study of City organization, structure, and functions.

Phase one is nearly complete with the proposed ordinances now with the Council. The second phase is scheduled for completion early next spring while the final phase will not be completed until next fall.

With contractor evaluation a must under the "lowest and best" mandate it is most certain that a review of prequalification procedures will be included in phase two. It is also likely that recommendations relating to contractor evaluation, evaluation criteria, questionnaire format, and the necessary administrative procedures will result from that review. We therefore do not believe it wise to adopt either the State procedure or our own new procedures City wide until such time as some guidelines surface from that review. This is especially so if another change is likely to result in several months.

September 1, 1978

Re: Lowest and Best - The Executive Secretary's  
Memo dated July 12, 1978

Without a well thought out detailed prequalification process we believe it would be extremely difficult to award to any but the low "dollar" bidder except in the most obvious cases. Attached for review is a report prepared by one of our staff relating to the requirements necessary to determine a contractor's irresponsibility via a prequalification process. In light of that report, its attachments, and the probability that the joint Executive-Legislative review will be completed within a few months we recommend the following:

- (1) The Board adopt a minimum prequalification procedure for contractor evaluation
- (2) A minimum questionnaire be developed
- (3) The following minimum modification be made to the Standard Specifications
  - (a) Section 2-1.06 Disqualification of Bidders, item (j) - Adopt as proposed by the Executive Secretary
  - (b) Section 3-1.01 Award of Contract

Amend the first sentence of paragraph one to read as follows:

"The award of contract, if it be awarded, shall be made within thirty (30) days after the date of opening of bids to the lowest and best bidder."

Very truly yours,  
Sgd Paul A. Wiatrak

PAUL A. WIATRAK, P.E.  
City Engineer

Information	
HWP	
Concurrence Prior to Signature	
DJH	9/1
AEM	JWA

DJH:kk

cc: Mayor Charles Royer  
O.M.B.  
City Attorney  
City Council  
Council Audit Staff

## MEMORANDUM

To AEM  
 By D. J. Howell *D. J. Howell* Date August 18, 1978  
 Subject PIKE STREET BEAUTIFICATION - Prequalification of Contractors

Award of the Pike Street Beautification project will ~~not~~ probably be made under the present "lowest bidder" charter requirement. Under that mandate it would be extremely difficult except in the most obvious cases to award to any but the low "dollar" bidder. Even if award were to be made under the "lowest and best" mandate it would still be unwise to award to a high bidder.

On June 29 you, HWP, SRR, REN, and myself met to discuss the above project. Discussed were concerns expressed by downtown businessmen in obtaining for the Pike Street project a contractor more responsive to their needs than was shown by the 5th Avenue Contractor. Those concerns primarily dealt with quality and job control, pedestrian and vehicular access and safety. It was your desire in light of those concerns to determine what criteria, coupled with an award procedure similar to METRO'S, would permit rejection of bid proposals submitted by irresponsible or undesirable contractors and still be permissible under the "lowest bidder" charter amendment. Also if award were to be made under the "lowest and best" mandate what criteria determines "best."

Selection of a contractor under both charter requirements usually involves a two step process (1) Prequalification, and (2) an arithmetical analysis of the bids to determine the lowest "dollar" bid. In the absence of any further requirements award under the "lowest bidder" concept may be made upon a monetary comparison only. However, most statutes contemplate award to the "lowest bidder" only if he is a competent and responsible contractor, has the facilities, organization, and financing to execute the work properly, and is the low "dollar" bidder.

Award under "lowest and best" or like terms requires much more evaluation to determine "best." It may not be made on a dollar basis only. In addition to experience, financial ability, equipment, and organization a successful bidder under "lowest and best" must possess integrity and trustworthiness, skill, judgement, promptness, previous performance of satisfactory work, ability to perform faithful and conscientious work, together with any other factors which may be dependent upon the type and kind of contract involved.

Again both need some form of prequalification but one is required where the other is not and the degree of detailed evaluation is much different.

AEM  
DJH

PIKE STREET BEAUTIFICATION -  
Prequalification of Contractors

August 18, 1978

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When prequalification occurs it is strictly an administrative decision. City Light prequalifies contractors based upon experience, financing and type of work on an annual basis. The HRD prequalifies all contractors on City contracts each time a bid is submitted concurrent with BPW award activities. Metro on the other hand does their's prior to the opening of bids. All three are permissible under present BPW and charter requirements. However, the decision as to which time would be best to prequalify should depend upon how much and to what degree prequalification takes place. Attached for your review are two formats which could be used.

As to the criteria which need be evaluated under a "lowest and best" or like term requirements, I have summarized the following from the Cornell Law Quarterly, Vol. 28; McQuillin, Municipal Corporations, 3rd Edition 1977; and Public Works and Contracts, 64Am Jur 2d:

Criteria for Awarding to the "Lowest and Best/etc."

The terms "lowest and best," "lowest responsible," and like terms are essentially interchangeable. They require the awarding authority to look at factors and elements other than monetary standing to determine the best bid. Again as interpreted by case law these terms require a successful contractor to possess financial or pecuniary ability to complete the contract, integrity and trustworthiness, skill, judgement, ability to perform faithful and conscientious work, promptness, experience, necessary facilities and equipment for doing the work, efficiency, previous performance of satisfactory work, together with other essential factors which may be dependent upon the type and kind of contract involved. The ability to furnish bond and show financial responsibility by themselves and are insufficient to determine "lowest and best/etc." within the meaning of the term.

In evaluating the above requirements as they relate to "who is best," awarding authorities generally have a broad discretion in determining what bid most nearly answer such requirements. However, this discretion, even though broad, is not an arbitrarily uncontrolled one. It is limited by case law to the exercise of bona fide judgement based upon facts tending reasonably to support their determination. Where no plausible reason is given an award to someone other than the lowest bidder will be considered prima facie erroneous and illegal.

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DJH

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Prequalification of Contractors

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As the exercise of such judgement and discretion involves a judicial act it must be shown that the determination to award to other than the low bidder was made honestly and fairly and was based upon facts obtained after investigation into the responsibility of all bidders. The facts must then tend to show that the low bidder if not awarded the contract was not the "best/most responsible/etc." bidder. Failure of an awarding authority to make such an investigation or, an award based upon factors not within the meaning of the term "lowest and best/etc." as outlined by case law, would not be upheld.

Based upon the preceding there are then two things an awarding authority must do in order to make a valid award to the "lowest and best" bidder who is not the lowest "dollar" bidder:

- (1) determine the responsibility of the bidders and
- (2) determine which of the responsible bidders has submitted the lowest bid.

This would then determine the "lowest and best" bidder.

The second step is simple. That only requires a comparison of arithmetical figures. It does not involve the exercise of any judgement or discretion. But the first step, having to prove irresponsibility on the part of the bidder, becomes a difficult and delicate matter except in the most obvious cases. It is difficult in that there is an enormous amount of detailed data which should be carefully, honestly, and fairly evaluated. It is delicate in that the information required of the contractor may be of a personal or confidential nature. Although the legality of prequalification is well established it is still very controversial among contractors.

There are some very obvious advantages to prequalification and some equally obvious disadvantages. Listed here are a few of the most obvious ones:

Advantages:

- allows some control over qualifications of contractor
- competent bidder lists established in advance
- failures and defaults minimized
- unfit or undesirable contractors may be eliminated

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PIKE STREET BEAUTIFICATION -  
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Disadvantages

- questionnaires too complicated and personal for small contractors
- increases the chance for litigation
- undue expenditure of time to administrate properly
- easily abused
- restricts competition
- eliminates new or young contractors
- may be arbitrary and unreasonable
- increases cost

In summary it is premature to establish prequalification for only one project without the resources to adequately perform the analysis required. It may only antagonize contractor's to the point of refusing to bid or result in an increase of costs for inadequate reasons.

The time and resources to adequately institute and administrate a prequalification procedure which would be legally enforceable would in effect require completing Phase II<sup>1</sup> of the new BPW ordinance scheduled for completion late next year.

DJH:kk

BPW

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

✓ August 25, 1978

To: All Board of Public Works Members  
From: *Diana Peterson for*  
Betty L. McFarlane, Executive Secretary  
Re: Submittal of Agenda Items

Please be advised that submittal of agenda items for the Board meeting of September 6, 1978 will be September 1, 1978 by 5:00 p.m.

Thank you.

BLM/jw

cc: Doug Howell, Engineering  
John Skommesa, Engineering  
Evelyn Larson, Parks and Recreation  
Bill Rashkov, Water  
John Hansen, Lighting  
R. L. Snyder, Buildings  
Chuck Hennebry, Buildings

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BPN

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT  
MEMORANDUM

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		DEM/DR
		DJH
		EMW/KTS/SD

✓ August 17, 1978

To: All Board of Public Works Members

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Actual Project Costs

To enable the Board of Public Works to have complete cost figures on public works contracts, effective from this date on, when requesting acceptance from the Board of each project as complete, please identify the total project dollar amount; i.e. contract award amount, supplemental agreements and/or change orders, engineering and City costs, incidentals, etc.

This will result in total cost figures on record with the Board of Public Works.

Thank you.

BLM:jrn

cc: Doug Howell/H. Parchen, Engineering  
Ed Engel/Evelyn Larson, Parks and Recreation  
Bob Snyder, Buildings  
Bill Rashkov, Water  
John Hansen, Lighting

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B.P.W.

PAUL A. WIATRAC, CITY ENGINEER

Board of Public Works  
Office of the Executive Secretary  
*Re: Lowest and Best Bidder*

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP 8/16/78  
(date)

All B.P.W. Members  
(referred to)

Blm

(referred by)

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: Attached are some legal interpretations on lowest and best, etc. bidder and determination of same by awarding authorities.

\*Action requested no later than \_\_\_\_\_  
(date)

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INFORMATION		
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QEM	DJH	

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A state has been held estopped from complaining that a finished work made up of approved samples was unsatisfactory, where the state had approved the samples of materials submitted by the contractor and paid for some of such materials delivered on the site of the work.<sup>94</sup>

### § 73. Union or nonunion labor.

According to the prevailing view, public officials in determining the lowest responsible bidder for a public contract are not permitted to discriminate between contractors employing organized labor and those employing unorganized labor, and to refuse to contract with the lowest bidder merely because he does not employ organized labor exclusively,<sup>95</sup> even though it has been held that there is possibility of costly delays as a result of trouble caused by employment of nonunion labor.<sup>96</sup> Upon the latter point, however, there is some difference of opinion.<sup>97</sup>

The question is doubtless controlled by the local viewpoint regarding the propriety of specifying, in bidding for public contracts, that the bidder base his estimates upon the employment of union labor, or of stipulations in the contract requiring him to employ such labor.<sup>98</sup>

### § 74. Effect of bidder furnishing or failing to furnish bond or security.

Public authorities, when not compelled to award public contracts to the one offering the lowest pecuniary bid, but authorized to award contracts to the lowest responsible bidder, lowest and best bidder, etc., are not limited in their selection to the lowest pecuniary bid by reason of the fact the bidder has furnished a bond for the faithful performance of his contract, but as in other cases, may take into consideration all other pertinent factors and elements, such as business judgment, capacity, skill, etc., of the bidder, and should exercise wise and honest judgment in determination of the question of responsibility.<sup>99</sup>

The public interest is better subserved and promoted by faithful performance by the contractor than by resort to indemnity, since in the very nature of things, such remedy is inadequate and too often entails litigation, expensive

*Annotation:* 27 ALR2d 917, 921, 936, 937, §§ 2, 7.

94. § 15, *supra*.

95. *Miller v Des Moines*, 143 Iowa 409, 122 NW 226; *State ex rel. United Dist. Heating, Inc. v State Office Bldg. Com.* 124 Ohio St 413, 179 NE 138, 80 ALR 1376, mandamus allowed 125 Ohio St 301, 181 NE 129, 80 ALR 1379.

*Annotation:* 3 ALR3d 864, 878, § 6; 110 ALR 1406, 1407.

96. *State ex rel. United Dist. Heating v State Office Bldg. Com.* 125 Ohio St 301, 181 NE 129, 80 ALR 1379.

*Annotation:* 3 ALR3d 864, 878, § 6.

97. *Pallas v Johnson*, 100 Colo 449, 68 P2d 559, 110 ALR 1403, wherein the lowest bidder for a public contract on one of several projects for which there was urgent need of early completion maintained an "open shop" and employed nonunion labor, and it was determined

by the officials in charge that if the work was given to such a bidder, difficulties would arise between the laborers on different projects, resulting in great delay through strikes, and it was held that such officials, in letting the contract to the lowest bidder employing union labor rather than to the nonunion bidder whose bid was lowest, did not abuse their discretion or violate a statute requiring the award of public contracts to be let to the "lowest responsible bidder."

*Annotation:* 110 ALR 1406, 1410.

98. § 201, *infra*.

99. *Wilmott Coal Co. v State Purchasing Com.* 246 Ky 115, 54 SW2d 634, 86 ALR 127; *State ex rel. Eaves v Rickards*, 16 Mont 145, 40 P 210.

*Annotation:* 86 ALR 131, 132.

As to public contractors' performance bonds generally, see 17 Am Jur 2d, CONTRACTORS' BONDS §§ 43 et seq.

delays, and damages which cannot be adequately measured or compensated.<sup>1</sup> Nevertheless, it has been held that where the lowest bidder acknowledges his inability to give satisfactory security, the contract may be awarded to the next lowest bidder without readvertisement.<sup>2</sup> It has also been held that where a bond is required of bidders, the public authorities may exercise discretion as to its sufficiency, and that if a satisfactory bond is not given as required, the bid may be rejected.<sup>3</sup>

### 3. REJECTION OF BIDS

#### § 75. Generally; effect of reservation of right to reject.

Frequently, the provisions of a constitution, city or county charter, or a statute or ordinance gives public authorities the right to reject "any and all" bids or "any or all" bids, and the authority thus granted is usually given effect by the courts,<sup>4</sup> although in some cases under a particular statute involved, the right of public authorities to reject all bids has been recognized as one of limited discretion.<sup>5</sup> Moreover, in the absence of such a provision, the courts have recognized the right of public authorities to reject all bids, particularly where the invitation to bid contained an express reservation of the right,<sup>7</sup> notwithstanding that the provisions of a statute or a city charter required the

1. *Wilmott Coal Co. v State Purchasing Com.*, 246 Ky 115, 54 SW2d 634, 86 ALR 127.

2. *Leitz v New Orleans*, 136 La 483, 67 So 339.

3. § 60, supra.

4. *Stanley-Taylor Co. v San Francisco*, 135 Cal 486, 67 P 783; *Grant v Common Council of Detroit*, 91 Mich 274, 51 NW 997; *Armitage v Newark*, 86 NJL 5, 90 A 1035; *State ex rel. Cleveland Trinidad Pav. Co. v Board of Public Service*, 81 Ohio St 218, 90 NE 339.

*Annotation*: 31 ALR2d 469, 471 et seq., § 2.

That new bids for a public improvement might be in excess of old ones has been held not to preclude the director of the department of public works from exercising his statutory authority to reject all bids "for the best interests of the State," where the original estimates of cost by the department's engineers were substantially in error, and the new estimates were made after the bids were opened and based on the bidders' data and work sheets. *Charles L. Harney, Inc. v Durkee*, 107 Cal App 2d 570, 237 P2d 561, 31 ALR2d 457, further holding that recommendations of engineers of the department of public works to accept a certain low bid for a public improvement, although a factor to be considered, are not binding upon the department director in determining whether to exercise the power conferred upon him by statute to reject all bids if he deems such rejection to be "for the best interests of the State."

Under a statute conferring on the director of public works the power to reject all bids if he deems such rejection to be "for the best interests of the State," the reasonable likelihood of securing a lower bid on readvertising has been

held not the only factor to be considered by the director, who may also weigh the absence of an accurate preliminary estimate, required by law, by which to judge the bid, the probability of an attack on the validity of a contract awarded, and the consequent delay in the work. *Charles L. Harney, Inc. v Durkee*, 107 Cal App 2d 570, 237 P2d 561, 31 ALR2d 457.

*Practice Aids*—Instructions to bidders reserving right to reject bids. 11 AM JUR LEGAL FORMS, PUBLIC WORKS AND CONTRACTS, Form 11:398.

As to extent of official discretion to reject, see § 76, infra.

5. *Marshall Constr. Co. v Bigelow*, 29 Hawaii 48; *Connolly v Board of Chosen Freeholders*, 57 NJL 236, 30 A 543; *Neacy v Milwaukee*, 171 Wis 311, 176 NW 871.

*Annotation*: 31 ALR2d 469, 474, 475, § 3.

6. *Covington v Basich Bros. Constr. Co.* 72 Ariz 280, 233 P2d 837; *Laurent v San Francisco*, 99 Cal App 2d 707, 222 P2d 274; *Dictaphone Corp. v O'Leary*, 287 NY 491, 41 NE2d 65; *Straw v Williamsport*, 286 Pa 41, 132 A 804.

*Annotation*: 31 ALR2d 469, 475 et seq., § 4.

7. *Laurent v San Francisco*, 99 Cal App 2d 707, 222 P2d 274; *Peoples v Byrd*, 93 Ga 688, 25 SE 677; *Straw v Williamsport*, 286 Pa 41, 132 A 804.

*Annotation*: 31 ALR2d 469, 478 et seq., § 5.

A state has been held to have the option to reject any and all bids where the notice for the submission of bids so provides. *People ex rel. Hilton Bridge Constr. Co. v Aldridge*, 13 App Div 24, 43 NYS 99.

Although statutes commonly provide that no contract shall be made at a price in excess of the estimated cost thereof,<sup>33</sup> it has been held that a contract let in good faith is not invalidated by the circumstance that the cost of the work, when actually executed, exceeds the estimate.<sup>34</sup> It has also been held that a municipal sewer contract, let upon the unit basis, is not illegal because not let within the estimated cost.<sup>35</sup>

The public authorities may authorize extra work when the terms as to that work are included in the advertisement, and when all bidders know those terms and consider them in making their bids.<sup>36</sup> **DEPENDS UPON AVAILABLE FUNDS.**

## 2. REQUIREMENTS AND DETERMINATION AS TO LOWEST RESPONSIBLE BIDDER, ETC.

### a. IN GENERAL

#### § 67. Generally.

Statutes and ordinances governing letting of public contracts by public authorities variously require such contracts to be awarded to the "lowest bidder," "lowest and best bidder," or "lowest responsible bidder," and the fact, therefore, that a bid is in terms of dollars and cents the lowest of those which have been submitted is not necessarily the determining factor in the letting of the contract.<sup>37</sup> As a matter of fact, most statutes contemplate the letting of the contract to the lowest bidder only if he is a competent and responsible contractor having the facilities and the ability to execute the contract properly.<sup>38</sup>

Much litigation has arisen concerning the construction of these provisions relative to the bidder to whom the contract may or must be let, and to the discretion which may be exercised in awarding contracts. The "lowest" bid may be determined by monetary standards with the dollar as the unit, but this is not so in determining the "best" bid, or the "responsible" bid; that

33. The reader is advised to consult the statutes of his jurisdiction.

34. *Bates & R. Constr. Co. v Board of Comrs.* (DC Ohio) 274 F 639.

35. *Daehler v Portsmouth*, 45 Ohio App 15, 12 Ohio L. Abs 385, 185 NE 52, error dismd 126 Ohio St 217, 185 NE 55, where, in his estimate of cost, the engineer had mistakenly omitted certain items of material.

36. *Jonathan Clark & Sons Co. v Pittsburgh*, 217 Pa 46, 66 A 154.

As to reimbursement for extra work, see §§ 170 et seq., infra.

37. *Miller v Des Moines*, 143 Iowa 409, 122 NW 226; *Hillside Township v Sternin*, 25 NJ 317, 136 A2d 265 (saying that the significance of the expression "lowest bidder" is not restricted to the amount of the bid, but that it means also that the bid conforms with the

specifications); *McIntosh Road Materials Co. v Woolworth*, 365 Pa 190, 74 A2d 384 (in which the court stated that the term "lowest responsible bidder" does not mean the lowest bidder in dollars, nor does it mean that the public officials may capriciously select the highest bidder regardless of responsibility or cost, since the law requires the exercise of a sound discretion); *Clayton v Salt Lake City*, 15 Utah 2d 57, 387 P2d 93.

**Practice Aids.**—Award of contract. 11 AM JUR LEGAL FORMS, PUBLIC WORKS AND CONTRACTS, Form 11:419.

—Instructions to bidders as to award. 11 AM JUR LEGAL FORMS, PUBLIC WORKS AND CONTRACTS, Forms 11:382, 11:383.

38. *Wilmott Coal Co. v State Purchasing Com.* 246 Ky 115, 54 SW2d 634, 86 ALR 127; *Clayton v Salt Lake City*, 15 Utah 2d 57, 387 P2d 93.

**Annotation:** 86 ALR 131 et seq.

question involves a number of other factors and elements.<sup>39</sup> Thus, under statutory provisions directing that the contract be let to the "lowest and best bidder" or the "lowest or best bidder," an award may be made to one other than the lowest bidder. In determining which of several bids is the lowest, practical effects must be considered; hence, a bid for supplies is not to be deemed the lowest merely because a purchase of one each of the several items would show it to be the lowest if, in view of the quantities required, some other bid is the lowest.<sup>40</sup>

Federal statutes provide that the award shall be made to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the United States, price and other factors considered.<sup>42</sup>

Where no statutory provision is made for the public letting of contracts on bids, the contract authority has been held to have the right to reject any or all bids<sup>43</sup> or to let the contract to the bidder who in the judgment of the contracting authority presents the best proposition whether or not it is the lowest bid.<sup>44</sup>

★ All else being equal, it is the duty of the public authorities to accept the bid involving the least expenditure of public funds.<sup>45</sup>

#### § 68. Discretion of officials in choosing between bidders; court interference.

Where the controlling statute or ordinance requires without qualification the letting of public contracts to the lowest bidder, the duty of awarding the contract is generally held to be ministerial and not judicial, and must be performed without exercise of discretion; that is to say, the contract must be awarded to the one whose bid is actually the lowest.<sup>46</sup>

39. *Wilmott Coal Co. v State Purchasing Com.*, 246 Ky 115, 54 SW2d 634, 86 ALR 127; *McIntosh Road Materials Co. v Woolworth*, 365 Pa 190, 74 A2d 384 (where the court pointed out that a combination of bids which, while lower than a previous bid by approximately \$18,000, placed the heavy contingent liability for certain additional charges upon the commonwealth instead of the contractor, as in the previous bid, could not properly be considered the "low bids of record"); *Clayton v Salt Lake City*, 15 Utah 2d 57, 387 P2d 93; *Taylor v Arlington County*, 189 Va 472, 53 SE2d 34.

As to factors in determining the responsibility of bidders, see §§ 70 et seq., infra.

40. *State ex rel. Elliott v Connor*, 123 Ohio St 310, 175 NE 200; *State ex rel. Walton v Hermann*, 63 Ohio St 440, 59 NE 104; *Pathe v Donaldson*, 29 Ohio App 171, 6 Ohio L Abs 362, 163 NE 204, error dismd 119 Ohio St 648, 166 NE 202.

41. *State ex rel. Mills v Hamilton County*, 20 Ohio St 425.

42. 10 USCS § 2305(d) (Armed Forces procurement generally); 41 USCS § 253(b) (procurement of supplies and services by federal executive agencies generally).

See also 10 USCS § 2275 (authorizing the Armed Forces to award a contract for aircraft, aircraft parts, or aeronautical accessories for experimental purposes to the lowest responsible bidder who can satisfactorily perform the work to the best advantage of the United

States); 23 USCS § 112(b) (providing that contracts for the construction of highways under the Federal Aid highway system shall be awarded on the basis of the lowest responsible bid submitted by a bidder meeting established criteria of responsibility); 44 USCS § 511 (stipulating that contracts for paper and envelopes are to be awarded to the lowest and best bidder for the interest of the government).

As to Federal Regulations on responsible bidder or contractor, see 41 CFR §§ 1-310, 1-1.310-6, 1-1.310-7, 1-1.310-11, 5-1.310 et seq., 5A-1.310 et seq., 5C-1.310, 7-1.310 et seq., 8-1.310, 9-1.310 et seq., 12-1.310, 18-1.900 et seq., 18-2.407-2. See also 32 CFR §§ 1.900 et seq., 2.407-2 (Armed Services regulations).

43. § 75, infra.

44. *State ex rel. Aller & Sharp, Inc. v Taylor* (Ohio App) 32 Ohio L Abs 461, stating that in such case the contracting authority, acting in good faith, has an absolute right to determine the best bid and award the contract accordingly.

45. *Wilmott Coal Co. v State Purchasing Com.*, 246 Ky 115, 54 SW2d 634, 86 ALR 127; *Parker Bros. v Crawford*, 219 Miss 199, 68 So 2d 281; *Taylor v County Board of Arlington County*, 189 Va 472, 53 SE2d 34.

46. *T. L. James & Co. v Jefferson Parish Council* (La App) 161 So 2d 597; *State ex rel. Woodruff-Dunlap Printing Co. v Cornell*, 52

Usually, however, as pointed out above, the contract is not required to be awarded to the lowest bidder, without qualification, but is to be awarded to the "lowest responsible bidder," "lowest and best bidder," etc.<sup>47</sup> and there is but little dissent<sup>48</sup> from the general rule that in determining who is such "lowest responsible bidder," "lowest and best bidder," etc., public boards and officials are vested with wide discretion,<sup>49</sup> and their exercise of such discretion will not be interfered with by the courts, even if erroneous.<sup>50</sup> Under this rule, public authorities may exercise discretion as to quality of material or workmanship, and its adaptability to the particular use or purpose desired,<sup>51</sup> and, according to the prevailing view, are allowed to make a choice between different kinds of materials when, by the terms of the specifications, competition is open as to all kinds, provided, of course, that the choice must be reasonable, and not fraudulent or arbitrary.<sup>52</sup>

Where contracts are to be let on terms most advantageous to or to the best interests of the state or other public body, the discretion in making the award is particularly broad, and will not be interfered with by the courts if exercised on a rational basis, without fraud or palpable abuse.<sup>53</sup> Moreover, where there

Neb 25, 71 NW 961 (by implication); State v Marion County, 39 Ohio St 188 (by implication).

**Annotation:** 80 ALR 1382, 1394.

47. § 67, supra.

48. Scott v United States, 44 Ct Cl 524 (letting of contract by agent of the government); Marsh v State, 2 Neb (Unof) 372, 96 NW 520; State ex rel. Woodruff-Dunlap Printing Co. v Cornell, 52 Neb 25, 71 NW 961 (by implication).

49. Housing Authority of Opelousas v Pittman Constr. Co. (CA5 La) 264 F2d 695; Inge v Board of Public Works, 135 Ala 187, 33 So 678; Pallas v Johnson, 100 Colo 449, 68 P2d 559, 110 ALR 1403; Vellaco v Derby, 27 Conn Supp 135, 232 A2d 335; Wyandotte County v Davis, 92 Kan 672, 141 P 555; Times Pub. Co. v Everett, 9 Wash 518, 37 P 695.

**Annotation:** 65 ALR 835, 839; 80 ALR 1382 et seq.

As to factors public officials may consider in determining the responsibility of bidders, see §§ 70 et seq., infra.

50. Williams v Topeka, 85 Kan 857, 118 P 864; Wilmott Coal Co. v State Purchasing Com. 246 Ky 115, 54 SW2d 634, 86 ALR 127; Maryland Pav. Co. v Mahool, 110 Md 397, 72 A 833 (ruling that the determination by the municipal authorities of the question whether a bidder has complied with the conditions imposed upon bidders by the advertisement, in the absence of fraud or collusion, is final and conclusive); Wilson v Trenton, 61 NJL 599, 40 A 575 (declaring that where several elements enter into the bidding, so that the determination of who is the lowest bidder requires the exercise of some judgment, the decision of municipal authorities as to who, among several bidders, is the lowest, cannot, if resting on legal evidence, be reviewed by the courts).

See Austin v Housing Authority of Hartford, 143 Conn 338, 122 A2d 399, saying that when it becomes necessary for an authority awarding a contract to exercise its judgment in order to determine which is the lowest bid, it would be improper for a court to override the decision unless it appeared that by the exercise of sound judgment the authority could not reasonably have reached the decision it did.

51. Suburban Invest. Co. v Hyde, 61 Fla 809, 55 So 76; People ex rel. Assyrian Asphalt Co. v Kent, 160 Ill 655, 43 NE 760; Stern v Spokane, 60 Wash 325, 111 P 231.

**Annotation:** 27 ALR2d 917, 920-941, §§ 2-9.

As to the right of contract-awarding authorities to consider differences in character or quality of materials or work, generally, see § 71, infra.

52. § 71, infra.

As to the propriety of alternate plans or specifications, see § 52, supra.

53. Gillette v Peabody, 19 Colo App 356, 75 P 18; Mills Pub. Co. v Larrabee, 78 Iowa 97, 42 NW 593; State v Passaic, 63 NJL 208, 42 A 1058; Modjeski & Masters v Pack, 215 Tenn 629, 388 SW2d 144.

See 10 USCS §§ 2275, 2305(d), 41 USCS § 253(b), 44 USCS § 511, stated in § 67, supra.

A municipality is not required to accept the bid of the lowest responsible bidder for each section of the work, but may award the entire contract to one bidder, although his bid is somewhat higher than a combination of the lowest sectional bids, where, under the statutes, the officers of the municipality have the power to accept such bids as "they deem to be to the best interest of the municipality," and where it appears, from all the facts, that the advantages of letting the contract to the accepted bidder

is no statutory limitation upon the power to award public contracts, the whole subject matter is within the control of the public officers, provided they do not actually exceed their power or invade private rights, and they are left to their sense of official duty and responsibility; but they must act with due fidelity to the public and for the interest of the public, in good faith, with reasonable and ordinary care and diligence, and without fraud, collusion, corruption, or palpable abuse of discretion.<sup>54</sup>

The public authorities must always exercise a real discretion based upon facts reasonably tending to support their decision; the rule does not permit them to act arbitrarily.<sup>55</sup> While an honest determination that a bidder's bid, though the lowest, is not the best, will ordinarily control,<sup>56</sup> the law does not permit the arbitrary rejection of bids for public works nor arbitrary preference of one bid over another which is lower,<sup>57</sup> or an arbitrary classification of bids.<sup>58</sup> The award must be made honestly and in good faith; public authorities may not fraudulently cast upon taxpayers a substantially larger burden than necessary,<sup>59</sup> and when it appears that they have so acted, the courts will interfere.<sup>60</sup>

#### § 69. Administrative hearing; finding of facts.

It has been held in several cases that public authorities have no right to reject the lowest bid without a hearing,<sup>61</sup> although other cases have indicated that such a hearing need not be granted, unless the lowest bidder expressly requests it.<sup>62</sup> Moreover, where it appears that the lowest bid was rejected by the public authorities, that must be shown, when their decision is questioned, present evidence tending to show that reasons existed for their rejection in favor of the higher bidder;<sup>63</sup> the court will not indulge a presumption that the

outweigh the monetary difference between his bid and the combined lowest sectional bids. *Interstate Power Co. v McGregor*, 230 Iowa 42, 295 NW 770, 146 ALR 315.

54. *Atlanta v Stein*, 111 Ga 789, 36 SE 932.

55. *Housing Authority of Opelousas v Pittman Constr. Co.* (CA5 La) 264 F2d 695; *Otter Tail Power Co. v Mackichan*, 270 Minn 262, 133 NW2d 511 (saying that in reviewing the legality of methods adopted by municipal authorities in the letting of contracts, it is the obligation of the courts to determine whether the municipal officials in the exercise of their discretion have applied the method used in an arbitrary, capricious, or unreasonable manner); *Parker Bros. v Crawford*, 219 Miss 199, 68 So 2d 281; *State ex rel. Eaves v Rickards*, 16 Mont 145, 40 P 210.

56. *Housing Authority of Opelousas v Pittman Constr. Co.* (CA5 La) 264 F2d 695; *Times Pub. Co. v Everett*, 9 Wash 518, 37 P 695.

57. *Housing Authority of Opelousas v Pittman Constr. Co.* (CA5 La) 264 F2d 695; *Inge v Board of Public Works*, 135 Ala 187, 33 So 678; *Chippewa Bridge Co. v Durand*, 122 Wis 55, 99 NW 603.

58. *Inge v Board of Public Works*, 135 Ala 187, 33 So 678; *Fiske v People*, 188 Ill 206, 53 NE 985; *Goddard v Lowell*, 179 Mass 496, 61 NE 53; *Times Pub. Co. v Everett*, 9 Wash 518, 37 P 695.

925

As to discrimination against contractors employing nonunion labor, see § 201, infra.

59. *Parker Bros. v Crawford*, 219 Miss 199, 68 So 2d 281; *Nelson v New York*, 131 NY 4, 29 NE 814.

60. *Wilmott Coal Co. v State Purchasing Com.* 246 Ky 115, 54 SW2d 634, 86 ALR 127.

61. *Thomas Harrington's Sons Co. v Jersey City*, 78 NJL 610, 75 A 943; *Faist v Hoboken*, 72 NJL 361, 60 A 1120; *State v Marion County*, 39 Ohio St 188.

62. *Kelling v Edwards*, 116 Minn 484, 134 NW 221; *Barber Asphalt Paving Co. v Trenton*, 74 NJL 430, 65 A 873.

See *Commercial Cleaning Corp. v Sullivan*, 47 NJ 539, 222 A2d 4, saying that while no judicial or trial type of hearing should be required in the final decision made by a state director of purchasing in awarding public contracts, yet as a matter of good practice and fair procedure an informal hearing or conference should be granted, if requested by a dissatisfied rejected bidder, particularly if he is the low bidder, prior to execution of the contract with another bidder.

63. Under a statute directing the state furnishing board to let, to the "lowest responsible bidder," a contract for the publication and annotation of the state codes, the board does not "wrongfully," or "arbitrarily," exercise its

and business judgment,<sup>72</sup> his experience and his facilities for carrying out the contract,<sup>73</sup> his previous conduct under other contracts,<sup>74</sup> and the quality of his previous work,<sup>75</sup> as well as to pass upon his pecuniary ability, and when that discretion is properly exercised, the courts will not interfere.<sup>76</sup>

All matters bearing upon the likelihood that the contract will be promptly and efficiently performed bear upon the question of responsibility of bidders, and may and should be considered in determining who is the lowest responsible bidder.<sup>77</sup> The words "lowest and best bidder" are as comprehensive as "lowest responsible bidder."<sup>78</sup> A decision as to the lowest and best bidder for a supply contract involves a determination of the least expenditure of public funds and a consideration of the quality of the goods proposed to be furnished and the other factors and elements adverted to above.

The principle has been set forth that where plans and specifications for public construction reasonably and necessarily demand the consideration of several factors and no single bid is lowest in all the factors, the public officers may, in their reasonably exercised discretion, decide what weight to give the various factors, and may accept what they deem to be the lowest responsible bid, considering all the factors.<sup>80</sup> However, a statute may require that preference be given in the letting of a contract to a bidder who has paid county and state taxes within the state.<sup>81</sup>

72. *Housing Authority of Opelousas v Pittman Constr. Co.* (CA5 La) 264 F2d 695; *Inge v Board of Public Works*, 135 Ala 187, 33 So 678; *Pascoe v Barlum*, 247 Mich 343, 225 NW 506, 65 ALR 833; *Frame v Felix*, 167 Pa 47, 31 A 375; *Times Pub. Co. v Everett*, 9 Wash 518, 37 P 695.

Annotation: 86 ALR 131, 132.

See *Clayton v Salt Lake City*, 15 Utah 2d 57, 387 P2d 93 (holding that public authorities have the right to accept a higher bid if they think the higher bidder will construct a better facility and thus be a more prudent investment of public funds).

It is well settled that the legislative mandate that a bidder be "responsible" embraces moral integrity just as surely as it embraces a capacity to supply labor and materials. *Trap Rock Industries, Inc. v Kohl*, 59 Nj 471, 234 A2d 161.

73. *Kelling v Edwards*, 116 Minn 484, 134 NW 221; *Kandel v Greene*, 236 App Div 607, 260 NYS 502 (deciding that the state superintendent of public works could properly require a bidder to prove to the superintendent's satisfaction that the bidder had successfully completed a contract for similar work in an amount not less than 50 percent of the amount of the proposed contract, and that a bid could be rejected upon the failure to produce such proof), rearg den 233 App Div 756, 261 NYS 1024; *Hannan v Board of Education*, 25 Okla 372, 107 P 646; *Taylor v County Board of Arlington County*, 189 Va 472, 53 SE2d 34.

74. *Hanson v Mosser*, 247 Or 1, 427 P2d 97; *Douglass v Commonwealth*, 193 Pa 559; *Taylor v County Board of Arlington County*, 189 Va 472, 53 SE2d 34.

The fact that a bidder is in default with respect to other public contracts may be suffi-

cient to justify a rejection of his bid. *Kelling v Edwards*, 116 Minn 484, 134 NW 221.

75. *Housing Authority of Opelousas v Pittman Constr. Co.* (CA5 La) 264 F2d 695; *Keogh v Wilmington*, 4 Del Ch 491; *Dunigan v Woodbridge Twp.* 78 NJL 103, 73 A 477; *Chaffee v Crowley*, 49 ND 111, 190 NW 308; *Hanson v Mosser*, 247 Or 1, 427 P2d 97.

The fact that defective material was used by a contractor in the construction of an improvement supports a conclusion that he is not "responsible." *Wyandotte County v Davis*, 92 Kan 672, 141 P 555.

76. *Housing Authority of Opelousas v Pittman Constr. Co.* (CA5 La) 264 F2d 695; *Williams v Topeka*, 85 Kan 357, 118 P 864; *Hanson v Mosser*, 247 Or 1, 427 P2d 97.

77. *Wilmott Coal Co. v State Purchasing Com.* 246 Ky 115, 54 SW2d 634, 86 ALR 127; *Hannan v Board of Education*, 25 Okla 372, 107 P 646; *Hanson v Mosser*, 247 Or 1, 427 P2d 97.

78. *Wilmott Coal Co. v State Purchasing Com.* 246 Ky 115, 54 SW2d 634, 86 ALR 127.

79. *Wilmott Coal Co. v State Purchasing Com.* 246 Ky 115, 54 SW2d 634, 86 ALR 127; *Taylor v County Board of Arlington County*, 189 Va 472, 53 SE2d 34.

80. *Otter Tail Power Co. v Wheaton*, 235 Minn 123, 49 NW2d 504.

81. A statute requiring that a bidder who has paid state and county taxes within the state for not less than 2 successive years immediately prior to the making of his bid should be given preference over a bidder who has not paid such taxes, if his bid is within 5 percent of the

board or officials exercised discretion in determining the question as to who was the lowest responsible bidder.<sup>64</sup> So, it has been held that an award to a higher bidder was not proper and would be enjoined,<sup>65</sup> where it appeared that a lower bidder was fully equipped and qualified to perform the work bid, but it did not appear that the public board had made any reasonable effort to ascertain the fact.<sup>66</sup>

To meet this situation, the public board may make a ~~finding of facts~~ *make finding of facts* which, in their estimation, show that they have exercised discretion in the awarding of the contract.<sup>67</sup> It has been declared, however, that it is not generally necessary for public officers, in order to avoid the imputation of arbitrary action, to inquire of bidders as to their merits, or give them an opportunity to prove them, or make any findings of fact in regard thereto.<sup>68</sup> Furthermore, it has been ruled that if, on the question of a bidder's responsibility, public commissioners act upon their personal knowledge of a matter which they regard as conclusive on the subject, it is not necessary that they make a further investigation or have a formal hearing.<sup>69</sup>

#### b. PARTICULAR FACTORS IN DETERMINING RESPONSIBILITY OF BIDDERS AND CHOOSING BETWEEN THEM

##### § 70. Generally.

The bidder to whom a contract for public work is to be awarded, under a provision that such contracts shall be let to the "lowest responsible bidder" is one who is responsible and the lowest in price on the advertised basis.<sup>70</sup> Such a requirement does not compel the authorities to award a public contract to the lowest bidder who is financially responsible or who is able to produce responsible sureties.<sup>71</sup> The term "responsible" as thus used is not limited in its meaning to financial resources and ability. What the public desires is a well-constructed work, for which a lawsuit even against a responsible defendant is a poor substitute, and authorizations of this kind are held to invest public authorities with discretionary power to pass upon the ~~responsibility of the bidder~~ *responsibility of the bidder* necessary to the faithful performance of the contract upon the

discretion by rejecting a bid, although it is the lowest and is accompanied by an offer of adequate security, where it appears that bidders exhaustively discussed and explained their bids before the board, as well as their capacity to perform the work; that the board acted with deliberation, and took adjournments to make further inquiries; and that, after considering all the facts and information which it could reasonably be expected to obtain, it determined that the unsuccessful bidder did not have the facilities to do the work. *State ex rel. Eaves v Rickards*, 16 Mont 145, 40 P 210.

64. *Inge v Board of Public Works*, 135 Ala 187, 33 So 678.

65. § 88, *infra*.

66. *State ex rel. Buehler Print Co. v French* (App) 6 Ohio L Abs 606.

67. *Times Pub. Co. v Everett*, 9 Wash 518, 37 P 695.

68. *Hudson v Board of Education*, 41 Ohio App 402, 11 Ohio L Abs 274, 179 NE 701; *Leonard v Mayfield Heights* (App) 6 Ohio L

Abs 739 (so holding where officers concluded from former experience with the bidder that he was not the best bidder).

69. *Wyandotte County v Davis*, 92 Kan 672, 141 P 555; *Chaffee v Crowley*, 49 ND 111, 190 NW 308.

70. *Pascoe v Barlum*, 247 Mich 343, 225 NW 506, 65 ALR 833 (municipal charter provision); *Hanson v Mosser*, 247 Or 1, 427 P2d 97.

As to federal statutes on responsible bidders, see 10 USCS §§ 2275, 2505(d), 23 USCS § 112(b), 41 USCS § 253(b), 44 USCS § 511, stated in § 67, *supra*.

For Federal Regulations on the determination of the responsibility of bidders on public works and contracts, see 41 CFR §§ 1-1.310-6, 1-1.310-7, 5-1.310-6 et seq., 5A-1.310-6, 5A-1.310-7, 5C-1.310-6, 7-1.310-6, 7-1.310-7, 7-1.310-10, 8-1.310-6, 9-1.310-7, 12-1.310-6, 18-1.904 et seq. See also 32 CFR §§ 1.903 et seq. (armed services regulations).

71. § 68, *supra*.

### § 71. Differences in character, quality, or kind of materials, work, etc.

It is a widely accepted principle that public authorities, in awarding a public contract, may take into consideration the differences or variations in the quality or character of the materials, articles, or work proposed to be furnished by the respective bidders, under a constitutional or legislative provision requiring that the contract be awarded to the "lowest responsible bidder," the "lowest and best bidder," or a similarly designated bidder, the courts generally taking the position that the terms "lowest responsible bidder," and "lowest and best bidder" or their equivalent, do not mean that the awarding officials are required to let the contract to the lowest money bidder, even though he is financially responsible, but may award the contract to a higher bidder if in their honest judgment the materials, articles, or work which he proposes to furnish are better in quality or more suitable to the intended purpose than the low bidder's.<sup>82</sup> So also, with respect to different kinds of materials, articles, or work, the view is generally taken that under such a constitutional or legislative provision, the awarding officials may choose between the kinds and let the contract for the kind they honestly believe to be of better quality, or more suitable for the intended purpose, than another or other kinds, even at lower prices, where by the terms of the specifications competition is open to all kinds or more than one kind,<sup>83</sup> provided, of course, the choice is reasonable, and not fraudulent or arbitrary.<sup>84</sup> Moreover, in the absence of any applicable constitutional or legislative provision, it is generally held that public officials in awarding public contracts may take into consideration the differences or variations in the quality or character of the materials, articles, or work proposed to be furnished by the respective bidders.<sup>85</sup>

However, where two or more bids are received for the same kind or make of articles or materials, it has been held that the awarding officials have no authority to consider the character or quality thereof, but must accept the low

nontaxpayer's bid, is a valid and constitutional exercise of the powers of the state. *Schrey v Allison Steel Mfg. Co.* 75 Ariz 282, 255 P2d 604.

82. *Hodgeman v San Diego*, 53 Cal App 2d 610, 128 P2d 412; *Eggart v Westmark (Fla)* 45 So 2d 505; *Otter Tail Power Co. v Elbow Lake*, 234 Minn 419, 49 NW2d 197, 27 ALR2d 906; *Wilson v New Castle City*, 301 Pa 353, 152 A 102.

**Annotation:** 27 ALR2d 917, 926 et seq., § 5.

However, the view has apparently been taken in New Jersey that the term "lowest responsible bidder" does not include an authorization to the awarding board to consider the character or quality of the materials, articles, or work, it having been generally held in that state that if the materials, articles, or work come within the statute, the contract must be let to the lowest bidder who is "responsible." *McGovern v Trenton*, 84 NJL 237, 86 A 539; *Schwartz & Nagle Tires, Inc. v Board of Chosen Freeholders*, 6 NJ Super 72, 69 A2d 885, cert den 4 NJ 127, 71 A2d 681. **Annotation:** 27 ALR2d 917, 921, 931, 936, 937, §§ 2, 5, 7.

83. *Mitchell v Walden Motor Co.* 235 Ala 34, 177 So 151; *Baltimore v Flack*, 104 Md 107, 64 A 702; *Otter Tail Power Co. v Elbow Lake*, 234 Minn 419, 49 NW2d 197, 27 ALR2d 906; *State ex rel. Union Fuel Co. v Lincoln*, 68 Neb 597, 94 NW 719.

**Annotation:** 27 ALR2d 917, 932 et seq., § 6.

See *Otter Tail Power Co. v Wheaton*, 235 Minn 123, 49 NW2d 804, holding that where a village asks for base bids on a particular type of equipment and alternate bids on another type, the village council, in its discretion, may disregard the alternate bid in accepting the bid of the lowest responsible bidder.

84. *Baltimore v Flack*, 104 Md 107, 64 A 702; *East River Gas Light Co. v Donnelly*, 93 NY 557; *Schuck v Reading*, 186 Pa 248, 40 A 310.

85. *Mitchell v Walden Motor Co.* 235 Ala 34, 177 So 151 (by implication); *Kraft v Board of Education*, 67 NJL 512, 51 A 483; *Brener v Philadelphia*, 305 Pa 132, 157 A 466.

**Annotation:** 27 ALR2d 917, 922 et seq., § 3.

It has been held, in the absence of any reference to a legislative provision, that a decision to award a contract for printing index books of vital statistics by the typographic process would not be disturbed, although there was a bid for the lithographic process at about \$3,000 less, on the ground that the typographic process was more permanent in nature, and that permanency was important in connection with records of vital statistics. *Amalithone Realty Co. v New York*, 162 Misc 713, 295 NYS 423, affd 251 App Div 450, 297 NYS 262. **Annotation:** 27 ALR2d 917, 924, § 3.

Moreover, where a constitutional or legislative provision requires that a public contract be let to the "lowest bidder," it is generally held that the awarding officials have no authority to take into consideration the differences or variations in the character or quality of the materials, articles, or work proposed to be furnished by the respective bidders.<sup>87</sup> On the other hand, where public officials have the right to reject any and all bids for a public contract, they are usually held to have the authority to consider, in letting the contract, the differences or variations in the character or quality of the offered materials, articles, or work, whether an applicable provision requires that the contract be awarded to the "lowest responsible bidder," or the "lowest bidder," or contains no such stipulation.<sup>88</sup>

§ 72. Samples.

Municipal or other public authorities may make reasonable requirements in respect to the submission by the bidders of samples of the material which they intend to use, and the failure of a bidder to submit a sample justifies the rejection of his bid, though it be the lowest submitted.<sup>89</sup> The Federal Regulations provide for bid samples.<sup>90</sup>

Consideration by the awarding officials of samples or models of the articles or materials which bidders propose to furnish is generally upheld under provisions requiring that the contract be let to the "lowest responsible" bidder, or one similarly described.<sup>91</sup> But it has been held that a public contract could not be let to a high bidder simply because a sample submitted by him was of better quality than one submitted by a lower bidder, where the sample of the lower bidder came up to the standard set by the specifications.

86. *Otter Tail Power Co. v Elbow Lake*, 234 Minn 419, 49 NW2d 197, 27 ALR2d 906, wherein a village council advertised for bids to supply watt-hour meters in connection with a proposed municipal electric plant, it appearing that six bids were received, that two of them were for General Electric meters and two were for Sangamo meters, and that all of the bids were for a different price, the court held that while the council could choose between the kinds or make of meters, under an ordinance requiring that the contract be let to the lowest responsible bidder, it had no discretion but to accept the low bid on the same kind or make of meter, that is, for example, as between the two bidders on the General Electric meter or the two on the Sangamo meter, "the council could not accept the high over the low legal bid."

*Annotation*: 27 ALR2d 917, 921, 932, §§ 2, 5.

87. *Wilmott Coal Co. v State Purchasing Com.*, 246 Ky 115, 54 SW2d 634, 36 ALR 127 (recognizing rule); *State ex rel. Woodruff-Dunlap Printing Co. v Cornell*, 52 Neb 25, 71 NW 951; *Page v King*, 285 Pa 153, 131 A 707; *Ricketson v Milwaukee*, 105 Wis 591, 81 NW 864 (recognizing rule).

*Annotation*: 27 ALR2d 917, 937-940, § 8.

However, the contrary view has been taken where the applicable provision contained some qualifying factor, such as authority to determine whether an award to the lowest bidder would be for the best interest of the people, or the right to reject any and all bids. *Hodgeman*

*v San Diego*, 53 Cal App 2d 610, 128 P2d 412; *State ex rel. George M. Jensen Printing Co. v Snively*, 175 Minn 379, 221 NW 535; *Newark v Bonnell*, 57 NJL 424, 31 A 408. *Annotation*: 27 ALR2d 917, 930, 940, § 8.

88. § 75, *infra*.

89. *Robinson v Saginaw*, 257 Mich 557, 255 NW 396; *Ryan v Paterson*, 66 NJL 533, 49 A 587; *Stern v Spokane*, 60 Wash 325, 111 P 231.

*Annotation*: 27 ALR2d 917, 924 et seq., § 4.

90. *Maryland Pav. Co. v Mahool*, 110 Md 397, 72 A 838.

*Practice Aids*.—Instructions to bidders as to samples. 11 AM JUR LEGAL FORMS, PUBLIC WORKS AND CONTRACTS, Form 11:403.

91. See 41 CFR §§ 8-2.202-4, 18-2.202-4, 24-2.204-4.

See also 32 CFR § 2.204-4 (armed services regulations).

92. *United States Wood Preserving Co. v Sundmaker* (CA6 Ohio) 189 F 678 (recognizing rule); *Suburban Invest. Co. v Hyde*, 61 Pa 809, 55 So 76; *State ex rel. Silver v Kendall*, 15 Neb 252, 18 NW 85.

*Annotation*: 27 ALR2d 917, 921, 935-937 §§ 2, 7.

93. *McGovern v Trenton*, 81 NJL 257, 86 A 539.

FUJI MICRO SAFETY

BPT  
Re: MBE Utilization Report  
Second Quarter - 1978  
(April, May and June)

PAUL A. WIATRAK  
C.I. ENGINEER

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP 8/7/78  
(date)

Human Rights Department

(referred to)

Attn: Willie Winston, MBE Officer

Betty L. McFarlane Executive Secretary *Blm*

(referred by)

       Please prepare reply for the Executive Secretary's signature on office stationery.

       Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

       Forwarded for your investigation, report, and recommendation.

X Forwarded for your information and files.

Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*Action requested no later than \_\_\_\_\_ (date)

*All Board mem from  
Office of  
cc: Susan Lane, Womens Rights Div.*

*Orig Copy + atts - Human Rights Dept*

SEATTLE ENG DEPT  
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att  
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BPLW

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

August 1, 1978

To: All Board of Public Works Members

From: Betty L. McFarlane, Executive Secretary *BLM*

Re: Submittal of Agenda Items

Reminder - The deadline for submittal of Board of Public Works agenda items is five o'clock, Monday, prior to Wednesday Board meeting. We have been receiving a number of late requests which are not in final form. This places us in a bad position, time-wise, and does not afford proper screening of items.

This is to advise that we will be firm in the five o'clock deadline acceptance time. From now on, all items must be complete with the appropriate signatures and approvals at that time or the item will be scheduled for the following week. Emergency requests must be made by the Department Head to the Executive Secretary for exceptions to this rule.

Thank you.

BLM:jrn

- cc: Bob Snyder, Buildings
- Doug Howell, Engineering
- John Hansen, Lighting
- Bill Rashkov, Water
- Evelyn Larson, Parks and Recreation

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SEATTLE ENG DEPT  
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BPA

PAUL A. WIATRAK, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

✓ August 1, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *BLM*  
Re: Public Works Consultant Contracts - Insurance

After obtaining insurance on Consultant Contracts, please provide copies to the Board of Public Works Department and to the City Comptroller for filing with the approved contracts.

All such insurance should be checked for appropriate legal requirements with the City Attorney prior to filing.

BLM:jrn

cc: Bob Snyder, Buildings  
John Hansen, Lighting  
Doug Howell, Engineering  
William Rashkov, Water  
Evelyn Larson, Parks and Recreation

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SEATTLE ENG DEPT  
AUG 2 7 41 AM '78

BPW

PAUL A. WIATRAK, CITY ENGINEER

Re: Status  
of MBE  
Ent. Prog.

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP

17/17/78  
(date)

X Corp. Council

All BPW members  
(referred to)

Blm

(referred by)

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

X  Forwarded for your information and files.

Other: \_\_\_\_\_

\*Action requested no later than \_\_\_\_\_ (date)

ROUTING	DATE	INITIAL
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AEM/DJH		
DR		
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SEATTLE ENG DEPT

Orig: Human Rights Dept

Your  
Seattle  
Human Rights Department

Vivian L. Caver, Director  
Charles Royer, Mayor



July 11, 1978

TO: Dick Kelly  
Mayor's Office

FROM: Vivian L. Caver, Director *VLC*  
Human Rights Department

RE: Status of Minority Business Enterprise Program

As a result of our meeting on April 24, 1978, with representatives of the Board of Public Works (BPW), the Office of Women's Rights (OWR), the Law Department, and your office, I have undertaken the task of assessing the climate for introduction of legislation governing minority business enterprise (MBE) utilization on City contracts. My approach to this assessment has been two-fold: (1) determining the position of key City departments on the value of serving MBE legislation; and (2) gauging what the attitude of the MBE community in the Seattle area would be to a request for such legislation.

In order to determine the position of key City departments, I circulated a draft request for legislation to the BPW, OWR and the Purchasing Division, soliciting their comments. A copy of that draft and supporting materials is enclosed. Also enclosed for your review are the responses which were received. To synopsise, the responses were:

1. Both the BPW and OWR support a request for comprehensive legislation governing MBE utilization, including the items outlined on page 3 of the draft Request for legislation. The OWR specifically supports the concept of including women's business enterprises on an equal basis with MBE's, recognizing that implementation would move at a slower rate for women's businesses.

2. The Purchasing Agent continued to express the opinion that a MBE ordinance which included utilization goals would be inconsistent with the lowest and best bid requirement of the City Charter.

Dick Kelly  
Mayor's Office  
July 11, 1978  
Page 2

Over the past two months I have met with many key figures in Seattle's minority business community, and with the leaders of organizations which assist those businesses, to discuss the possibility of requesting legislation on MBE utilization. The general consensus is that all necessary steps should be taken to ensure the City's commitment to aggressive MBE utilization, and that if an ordinance is required in order to utilize goals or set asides, that such legislation should be pursued. I am confident, as a result of these discussions, that strong support will be forthcoming should the Mayor decide to propose an ordinance.

It was my understanding based on our April 24 meeting that, while the explorations into the feasibility of requesting legislation, discussed above, were taking place, the Executive Policy would be fully enforced. As you will recall, we were in agreement that whatever problems may exist with regard to enforcement of that Policy should not be considered a deterrent to continuing with its implementation. Apparently, this was not the understanding of all those present. By memorandum of June 5, 1978, Betty McFarlane indicated to you that the reporting requirements of the Policy would be complied with, but that set asides and percentage goals would not be included in contracts until an ordinance were enacted. This was in response to a set of proposed bid conditions governing MBE utilization submitted by this Department to the BPW. Although we were agreed that set asides would not be necessary until toward the end of the year, bid conditions requiring that bidders make every good faith effort to meet specific dollar or percentage goals in subcontracting to MBE's are essential to any effective MBE program. Such bid conditions do not raise the potential legal challenges with inhere in the use of set asides.

This Department's primary concern is that either enactment of an ordinance be aggressively pursued, or that the Policy be fully enforced. Because neither of these sources have been pursued over the past two months, MBE utilization through the first five months of this year is extremely low. Enclosed for your review is an except from over 1979 Budget Request summarizing the MBE utilization for the first five months of 1978.

In order to resolve this misunderstanding, and to consider the appropriate course of action from this point forward, I request that you convene a meeting of the affected departments as soon as possible. Any further delays can only serve to further jeopardize progress toward equitable utilization of women's and minority business enterprise on City contracts.

Dick Kelly  
Mayor's Office  
July 11, 1978  
Page 3

Please advise me at your earliest convenience of your disposition on this matter. Thank you for your assistance.

VLC/gb

cc: Betty McFarlane, BPW ✓  
Susan Lane, OWR  
Tomi Terao, Purchasing  
Germane Covington, OMB  
Royal Alley-Barnes

Encl.

## Your City, Seattle



### Memorandum

Date May 31, 1978  
Ref. 6-081

To Vivian L. Caver, Director, Human Rights Department

From T. H. Terao, Purchasing Agent

Subject Request for Legislation - Women's and  
Minority Business Utilization

We have reviewed your draft subject memorandum to Dick Kelley, dated May 8, 1978. Ideally, the proposed legislation might appear to be in the public interest, at least on the surface. Closer examination of the realities of the marketplace illuminates the deficiencies of the request for legislation.

Purchasing is utilizing input received from the Human Rights Department and the Women's Rights Office to solicit bids from WBE and MBE enterprises. Unfortunately, there are not many WBE and MBE enterprises offering products or services of use to the City.

Although some contract awards for small purchases have been made to MBE and WBE enterprises, we are finding that the majority of the enterprises are not competitive with the rest of private enterprise. Consistently, these firms are geared for sales and services at the retail level, rather than at the commercial or wholesale level of pricing in which the City makes the majority of its purchases.

Of the approximate 40 million dollars worth of contracts awarded through this office, the majority of the money is spent for large, sophisticated equipment such as transformers and vehicles. There are no WBE or MBE enterprises able to sell these products.

It would be a disservice to the taxpayers of this City to establish a 15% goal for MBE, WBE or MBE/WBE combined utilization. I believe that any such ordinance which might be enacted would be challenged in court. I don't believe that an ordinance establishing WBE/MBE goals would be in accordance with the Charter of the City of Seattle, which requires that contract awards be made to the lowest and best bidder. A WBE or MBE enterprise could hardly be classified as the lowest and best bidder when it is not competitive with the rest of private enterprise.

Purchasing will continue to assist, encourage and solicit bids from any WBE and MBE willing and able to bid on City requirements. Contract awards can be made only to the lowest and best bidder per City Attorney opinion dated February 6, 1978, attached.

ca  
cc Dick Kelley  
attachment

FEB 6 1978

MEMORANDUM

February 6, 1978

TO: Tomi H. Terao, Purchasing Agent # 1349

FROM: Douglas N. Jewett, City Attorney;  
Jorgen G. Bader, Assistant

RE: Your Ref: 2-638  
Preferential Purchasing of Supplies, Materials  
and Equipment from Minority-Owned Businesses.

By letter dated January 13, 1978, you requested our opinion about a proposal for "directing" some city purchases to businesses located within the City, which are owned by minorities and/or women. The proposal would be implemented by either of two methods:

- (a) The City might set aside a fixed percentage of its purchases for such firms, much as the United States of America has done in the 1977 Public Works Employment Act (P.L. 95-28; 91 Stat. 116). Section 103 of the act requires that assisted local governments expend at least ten percent (10%) of the grant for "minority owned business enterprises."; and
- (b) The City might grant such firms a fixed percentage preference in bidding similar to the five percent (5%) preference once granted for "products manufactured, fabricated or produced in the State of Washington" by former RCW 39.24.010 and by the former Article VIII § 16 of the City Charter.

It would involve purchases, through your division, of supplies, materials, equipment and services.

Implementing either proposal would require amending Ordinance No. 102151, as amended. Ordinance 102151, in Section 5, directs that the Purchasing Agent make "...all expenditures for supplies, materials, equipment, and services within the purview of this ordinance the estimated cost of which is in excess of Two Thousand Five Hundred Dollars (\$2,500) per item...on written contract entered into upon the basis of competitive bids..." except for several specific situations. The specific exceptions do not cover either proposal. Article VIII § 16 of the City Charter requires that purchases be made on the basis of competitive bidding, unless an ordinance authorizes otherwise. It provides, in part, as follows:

Memorandum to Tomi H. ...  
February 6, 1978  
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"The purchasing agent shall make all purchases of supplies, materials and equipment, in the manner provided by ordinance...

"Before making any purchase or sale, the purchasing agent shall be required to secure bids under such rules and regulations and subject to such exceptions as the council may by ordinance prescribe.

"All expenditures for supplies, materials or equipment involving more than such amount as may be specified by ordinance shall be made on written contract. All such contracts shall be awarded to the lowest and best bidder, after public advertisement as may be prescribed by ordinance...."

Unless authorized by enabling legislation the concept of competitive bidding precludes a preference for local or minority-owned businesses, Reiner v. Clarke County, 137 Wash. 190, 201 (1926); Taylor v. Philadelphia, 261 Pa. 458, 104 Atl. 766 (1918).

In addition, each proposal presents these two more fundamental issues:

- (1) The validity of using business location within the City as a factor in making municipal purchases; and
- (2) The validity of classifying, and granting assistance, on the basis of race, national origin or sex.

This memorandum informs you about the nature of the legal questions involved. It does not provide the analysis or evaluation of a formal opinion since we were orally informed that the Mayor and the City Council were also considering other alternatives and would be requesting your aid and our guidance in developing a proposal.

Cases from other jurisdictions have upheld state statutes like the former RCW 39.24.010, which provided preferences in competitive bidding for state and local government contracts for materials made or work performed within the state and to in-state contractors, e.g.:

Schrery v. Allison Steel Mfg. Co., 75 Ariz. 604, 255 P.2d 604 (1953) (Arizona contractors received preference in public works);

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The City of Phoenix v. Wittman Contracting Co.,  
20 Ariz. App. 1, 509 P.2d 1038 (1973) (Same);;

American Yearbook Co. v. Askew, 339 F.Supp. 719  
(M.D. Fla. 1972) (All printing for the state to be  
performed within Florida);

Garden State Dairies of Vineland, Inc. v. Sills,  
46 N.J. 349, 217 A.2d 126 (1966) (State Agency pur-  
chases of milk produced within New Jersey);

City and County of Denver v. Bossie, 83 Colo. 329,  
266 P.214 (1928) (Preference for Colorado stone and  
materials in construction of municipal buildings).

Other cases have upheld local ordinances granting similar pre-  
ferences for in-state work or materials, e.g., Allen v. Labsap,  
188 Mo. 692, 87 S.W. 926 (1905), cf. Opinion No. 5246 stating  
that the former Article VIII § 16 remained valid after repeal  
of RCW 39.24.010. However, in 1961-62 AGO No. 41, the Attorney  
General of the State of Washington stated that local governments  
may not establish a policy of giving bidders located within their  
own limits a five percent preferential treatment on purchases  
and/or contracts:

"(W)hile it may be permissible for municipal  
officers in an individual case to take into considera-  
tion locality as one of the factors involved in deter-  
mining who is the most responsible or 'best' bidder, a  
general practice by ordinance or resolution which  
establishes a five percent differential favoring local  
bidders would appear to be in the nature of an arbitrary  
classification for the benefit of a particular group  
without regard to the merits of any particular case.  
... (p. 3)

"It is our conclusion that the legislature has defined  
the only areas in which, all other things being equal,  
local (meaning 'in the state of Washington') factors  
may be considered even though the result may be to  
increase substantially the cost to the municipality.  
We can only conclude that any attempt by a municipality  
to enlarge the scope of this statute by an ordinance or  
resolution arbitrarily allowing a five percent differ-  
ential to local ('in the country') residents would be  
contrary to the principle of competitive bidding and  
beyond the power of the municipality to enact." (p. 4)

Memo to Tom H. Taylor  
February 6, 1978  
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Where a federal grant such as the Model City Program prescribes a preference for residents of an area, the City may make such classifications as necessary to carry out the terms and conditions of the federal assistance, RCW 39.28.010-.030; RCW 35.81.070; RCW 35.21.660; RCW 35.21.725-735, Tri-State Construction Co. V. The City of Seattle, King County Superior Court Cause No. 779041, appeal dismissed 14 W.Ap. 476 (1975).

RCW 35.22.650 directs the City to include in all contracts for public works or improvements exceeding the sum of ten thousand dollars or fifteen thousand dollars for construction of water mains a paragraph requiring the contractor to actively solicit the employment of minority group members and bids from qualified minority businesses, as follows:

"35.22.650 Public works or improvements--Minority business, employees--Contract, contents

All contracts by and between a first class city and contractors for any public work or improvement exceeding the sum of ten thousand dollars, or fifteen thousand dollars for construction of water mains, shall contain the following clause:

'Contractor agrees that he shall actively solicit the employment of minority group members. Contractor further agrees that he shall actively solicit bids for subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of his compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The contractor shall be required to submit evidence of compliance with this section as part of the bid.'

As used in this section, the term 'minority business' means a business at least fifty-one percent of which is owned by minority group members. Minority group members include, but are not limited to, Blacks, women, Native Americans, Orientals, Eskimos, Aleuts, and Spanish Americans. [Added by Laws 1st Ex Sess 1975 ch 56 § 4.]"

Memo to Tomi H. Terao  
February 6, 1978  
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Ordinance 101432 in Section 3.3 requires that contracts for purchases of supplies, materials and equipment contain an anti-discrimination provision, and that except for emergencies or goods available only from a single source, the vendor be pre-qualified by the Director of Human Rights as complying with ordinance requirements. Ordinance 101432 addresses employment practices of companies doing business with the City but not the character of their ownership.

In setting aside a fixed percentage of purchases or granting preferences for minority owned businesses, the proposal confronts the statutory and constitutional issues raised in litigation filed by contractors' associations in California and Pennsylvania to determine the validity of the "10% set aside" made by Section 103 of the 1977 Public Works Employment Act. The suits alleged that the Act's provisions violate the Fifth Amendment to the Constitution of the United States and Title VI of the Civil Rights Act of 1964 (PL. 88-352; 78 Stat. 241, 42 USC § 2000 c). The Fifth Amendment's prohibition against federal deprivation of rights without due process of law incorporates the concept of equal protection of the law made applicable to state and local government by the Fourteenth Amendment. In Constructors Association of Western Pennsylvania v. Kreps, the United States District Court for the Western District of Pennsylvania sustained the 1977 Act, 46 The United States Law Week 2228-2229; but, in Associated General Contractors of California v. Secretary of Commerce, the U. S. District Court for the Central District of California found the provision to be void, 46 U.S. L.W. 2242. Both cases are on appeal. The decisions of the respective federal appellate courts will establish precedents that may be persuasive on the issues of federal law.

Article I § 3 and 12 of the Constitution of the State of Washington respectively assure state residents of due process of law and equal protections of the law. Article 31 § 1 (Amendment 61) states that equality of rights and responsibilities under the law shall not be denied or abridged on account of sex. RCW Chapter 49.60, the State Law Against Discrimination, declares that there is a civil right to be free from discrimination upon the basis of race, creed, color, national origin, sex or the presence of any sensory, mental or physical handicap, prohibits such discrimination, and establishes the State Human Rights Commission with certain powers and duties to implement the law, RCW 49.60.010, .030, .050-.051, .120-.160, .260 and .320. The Washington Supreme Court has upheld the validity of affirmative action programs in providing equal employment opportunity, Lindsay v. Seattle, 86 Wn.2d 698 (1976). There are no

Memo to Tomi H. Terzo  
February 6, 1978  
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Washington cases or Human Rights Commission regulations upon governmental programs directed at assisting minority-owned business enterprises.

We will keep you informed about any substantial developments in either of the two federal cases and about other litigation bearing on the issues.

JGB:ate

cc: Budget Director  
Attn: Brian Johnson

Hugh Spitzer

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

May 10, 1978

To: Vivian Caver, Director  
Human Rights Department

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Draft Request for Legislation - Women and Minority  
Business Enterprises Utilization

I have reviewed the draft submitted by your Department on the above subject and concur in your preference for the third option: development of a detailed implementing Ordinance to carry out the policy direction of the Mayor. An Ordinance will give the City legal authority and firm ground to require Minority Business Enterprises participation on all contracts, and result in a successful program.

Appropriate bid and contract requirements should be included in the Ordinance so that set-asides will be possible, if necessary, to meet established goals.

I would appreciate your allowing the Board of Public Works to review this draft Ordinance when it is prepared, and provide input prior to finalizing.

Thank you.

BLM/jw

cc: Bob Royer, Mayor's Office  
Dick Kelley, Mayor's Office  
Board of Public Works Members

# Your City, Seattle

Executive Department — Office of Women's Rights



June 16, 1978

## MEMORANDUM

TO: Vivian Caver, Director  
Human Rights Department  
FROM: Susan Lane, Director  
Office of Women's Rights  
RE: Proposed Ordinance for Women and Minority Business Enterprises

This is in response to your memo of May 8 regarding the proposed legislation for women and minority business utilization. Certainly the need for such a program has been well documented. In the area of minority contracting we have seen few, if any, contract awards to minority enterprises; for women's business there were no contract awards in calendar year 1977, or the preceding years. The specific need for City Council action on this subject through passage of an ordinance would certainly serve to provide strength and clarity to our program for women and minority business legislation. Through the enactment of specific legislation, bid and contract provisions will be established for solicitation, utilization and the use of set-asides.

I concur in your delineation of the general elements of such an ordinance. These will establish a solid basis for further program implementation. For example:

- I Sub-point 2 speaks to the establishment of city wide, and departmental goals for minority business enterprises, with clear guidelines. While city wide goals may be articulated in the first round of program development, specific departmental goals may evolve in a longer time frame. It is important, however, to establish the framework for such on-going programs at the front end.
- I Sub-part 3 authorizes bid and contract provisions for requiring minority sub-contracting by the prime contractor. This provision is key to any utilization of minority or women owned firms.

Presumably, along with the five elements of decision in your memo would be the authority to recommend to the Mayor and City Council appropriate goals for the utilization of women and minority businesses.

On the issue of whether separate ordinances should be enacted for minority business enterprises and women's programs I have the following observations: there are a number of factors, as you have noted, which should be considered on the issue of a separate ordinance for minority business enterprises. These are:

- 1) There is sufficient data establishing goals for minority business enterprises but such data does not currently exist for women's businesses.
- 2) The minority business program has been able to move more quickly than the women's business programs giving it base experience and support.

June 16, 1978  
Vivian Caver  
Page Two

- 3) Few programs exist at either the federal, state or local level which have addressed women's business and may serve as models for our program.

Each of these factors would suggest the need for the establishment of a strong legal base for the program for both minority and women owned businesses. While we recognize that the minority business program may well command the procedures well in advance of the women's program, nonetheless, it is our perspective that unless the legal basis is established for women's programs, in the same way and at the same time it is established for minority enterprises, that women's programs will again take the back seat. For that reason, my recommendation would be that a single ordinance be drafted and proposed to the Mayor for his presentation to the City Council. Furthermore, that all of the specific elements discussed in your draft proposal be specified for both women and minority programs, recognizing that the implementation of the women's program will move forward at a much slower rate given the pioneering effort we are beginning in this area.

We are looking forward to a comprehensive program in our city for the utilization of both women and minorities in contract awards. While separate programs may be established under a single ordinance we would anticipate close coordination and cooperation between this Office and the Department of Human Rights. I look forward to working with you on this and other subjects.

SL/pcg

cc: Dick Kelley  
Office of the Mayor

Your  
Seattle  
Human Rights Department

Vivian L. Caver, Director  
Charles Royer, Mayor

May 8, 1978



To: Tomi Terao  
Susan Lane  
Betty McFarlane  
Sue Sampson

From: Vivian L. Caver, Director *VLC*  
Human Rights Department

Re: Enclosed Request for Legislation

Enclosed for your review please find a draft request for legislation on Women's and Minority Business Utilization. I would appreciate receiving your comments on this request no later than Monday, May 15.

Thank you.

Enclosure

VLC:vr

Your  
Seattle  
Human Rights Department

Vivian L. Caver, Director  
Charles Royer, Mayor

May 8, 1978

DRAFT



To: Dick Kelley, Administrative Assistant  
Mayor's Office

From: Vivian L. Caver, Director  
Human Rights Department

Re: Request for Legislation - Women and Minority Business  
Enterprise Utilization

I hereby request the initiation of legislation which would establish a comprehensive program to ensure the utilization of minority and female owned businesses in all City contracting. The broad purpose of such an ordinance would be to overcome the present effects of past and continuing discrimination in our economic system by making every attempt to equitably utilize business enterprises owned and controlled by minorities and women, thereby furthering social and economic justice for such persons in our free enterprise system.

The acquisition of goods and services by the City of Seattle constitutes a significant contribution to the overall economy in this area. Moreover, government contracting as a whole is an integral part of the nation's economy. Until the past few years the major thrust of civil rights legislation and policy has been on securing equal employment opportunities for those who have been the victims of discrimination in employment - ethnic minorities, women, the handicapped, and older persons. Since 1972 the Human Rights Department has enforced Seattle Ordinance 101432 requiring that contractors doing business with the City ensure equal opportunity and take affirmative action to employ minorities and women. As our Contract Compliance program developed, informal efforts have been made to encourage contractors to utilize minority business enterprises (MBE's) in subcontracting. In 1974 the Board of Public Works adopted a policy encouraging prime contractors to make every good faith effort to subcontract to MBE's.

On the federal level, Executive Order 11625 established a MBE utilization requirement in federal contracting in 1971. Since that time and especially during the past year, there has been a proliferation of federal regulations from various federal contracting agencies (e.g., EDA, EPA, DOT, UMTA) requiring MBE utilization on projects funded by those agencies. Most notable has been the 10% set aside requirement imposed by Public Law 95-28, May 13, 1977 (Round II of the Local Public Works, Capital Development and Investment

Act of 1976), which required that grant recipients ensure that at least 10% of the amount of each grant be expended for MBE's. Through the cooperative efforts of this Department and awarding authorities, the total MBE participation in the approximately fifteen million dollars worth of City Round II projects reached nearly 25%.

On the state and local level legislation in the area of MBE utilization is also increasing. In 1975 the state enacted legislation requiring that first class cities require contractors on public works contracts to solicit MBE subcontractors. By council resolution METRO has had an ongoing MBE program since 1976. In 1977 the District of Columbia enacted legislation establishing one of the more aggressive MBE programs through the "sheltered market" mechanism whereby certain contracts are designated for limited competition from MBE's. Private industry, in response to legislative mandates, has also become involved in this area through industry programs such as the Pacific Northwest Regional Minority Purchasing Council, a coalition of large corporations dedicated to increasing procurement from MBE's. The Association of General Contractors has also begun to establish MBE coordinating councils nationwide to increase MBE participation in the construction industry.

Realizing that the informal efforts made toward increasing MBE participation on City contracts were not yielding substantial improvements, this Department submitted a draft policy to the Executive in the latter part of 1976. A series of drafts followed, finally resulting in the adoption of the currently effective Executive Policy on the Utilization of Women's and Minority Business Enterprises (Policy No. 77-100) on December 20, 1977.

By its terms the policy applies to all City contracting for goods and services. It mandates the creation and implementation of separate, comprehensive programs for MBE utilization and Women's business enterprise utilization by the Human Rights Department and the Office of Women's Rights, respectively. Annual goals for the utilization of MBE's and women's businesses are to be established for all contracts awarded by the City. The heart of the policy lies in the three-tiered approach to accomplishing these goals. See section 1(c). First, awarding authorities make every good faith effort to solicit bids from and award contracts to qualified MBE's and women's business enterprises. Second, awarding authorities are to require by contract similar efforts of their prime contractors in soliciting and awarding subcontracts. Finally, where necessary to achieve goals, "set asides" are to be used for MBE's (not for women's businesses). A set aside requires as a condition of responsiveness that bids on prime contracts identify a specified percentage of subcontracting as going to MBE's.

It should be noted that nothing in this scheme for MBE utilization in any way interferes with competitive bidding requirements. The lowest responsive bidder will always be selected. Although solicitation (or actual utilization via set aside) may be required as a condition of responsiveness, this no more interferes with competitive bidding requirements than does any other bid condition. The issue of legality/constitutionality arises only in the context of whether race or sex may be considered at all. Numerous legal challenges to the LPW/EDA 10% set aside program have been litigated in a number of U.S. Courts of Appeal

throughout the country with varying and conflicting results. Although the U.S. Supreme Court's decision in Bakke may have some consequences effecting the use of affirmative action for MBE's or women's businesses, at the present time the use of racial considerations to affirmatively overcome the present effects of past discrimination has strong support from the Washington Supreme Court. See generally, Lindsay v. City of Seattle, 548 P.2d 320 (1976). I strongly recommend that the approach the federal government has taken to pending decisions on the constitutionality, such legislation - to continue its aggressive approach to increasing MBE participation in government contracting - be followed by the City.

There are at least three alternative approaches to giving legislative authority to our MBE program: (1) the Executive Policy could be adopted by reference in an ordinance; (2) an ordinance could simply restate the Policy as is; or (3) a new ordinance could be developed. Under any alternative, the general elements of such an ordinance should be:

1. Authorization for the development and implementation of a comprehensive MBE program vesting sufficient power in the Human Rights Department to effectively administer such a program;
2. Provision for establishment of city-wide and departmental goals for MBE utilization by the Human Rights Department in accordance with clear guidelines;
3. Authorization for the use of bid and contract provisions by awarding authorities applicable to prime contracts which would require assurances of MBE utilization in subcontracting by the prime contractor;
4. Definition of MBE and authorization for the Human Rights Department to determine what businesses are MBE's; and
5. Reporting requirements, including reports from awarding authorities to the Human Rights Department and from the Human Rights Department to the Mayor and the City Council.

My preference is that the third option, development of a new ordinance, be chosen so that more strength and clarity could be given to our program. Specifically, required bid and contract provisions should be included in the ordinance pertaining to MBE solicitation and utilization and the use of set asides should be more clearly defined. Finally, consideration should be given to whether separate ordinances should be enacted for MBE and women's business programs. Factors which should be considered on this issue are: (1) sufficient data necessary for establishing goals is available for establishing the general availability of MBE's, but such data does not currently exist for women's businesses; (2) the development of our MBE program is currently more advanced than the women's business program (see the enclosed excerpt from our 1978 First Quarter Report); and (3) very few programs at the federal, state or local levels have addressed women's business utilization.

DRAFT

Although we are now developing and implementing our MBE program under the authority of Executive Policy 77-100, because of the pervasive impact of the MBE requirements on all those involved in City contracting including private industry, and because of the potential for challenges to our legal authority for the program, I strongly feel that a specific and direct legislative mandate authorizing our MBE program would greatly increase its stability and effectiveness. Due to the timing of our program implementation, I believe every effort should be made to secure such an ordinance by September of this year at the latest. Your assistance in expediting this matter is appreciated. Thank you.

Enclosure

VLC:vr

BPW

PAUL A. WIATRAK, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

MEMORANDUM

ROUTING	DATE	INITIAL
ACTION		
HEM/DJH		
FILE	✓	
INFORMATION		
PAW		DR
PMB		

July 12, 1978

SEATTLE ENG DEPT

JUL 14 7 44 AM '78

To: All Board Members

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Determining "Lowest and Best Bidder"

I suggest the following modified APWA Standard Specifications 10th Edition wording be included in Specifications for Public Works Projects when a new Board of Public Works Ordinance is passed requiring contracts to be awarded to lowest and best bidder & the amendment be made a part of the City Supplement to that already approved 10th Edition.

QUALIFICATION OF BIDDERS

Bidder must be qualified by experience, financing and equipment to do the work called for in the plans and specifications. Bidder shall furnish upon a form included for that purpose within the bid specifications, a statement of his construction experience and his general ability to perform the work contemplated, and shall submit same along with his bid proposal.

The Board of Public Works will evaluate all bids submitted to determine lowest and best bid. Upon request of the Board, a bidder whose bid is under consideration for award of a contract shall submit promptly to the Board satisfactory evidence of financial resources, his construction experience and his organization available for performance of the proposed contract.

DISQUALIFICATION OF BIDDERS

The Board of Public Works in its discretion may reject any and all bids for any reason. A bidder may be determined not responsible and his proposal rejected for a number of reasons, i.e.:

- (a) More than one proposal on the same project from a bidder submitted under the same or different names.
- (b) Evidence of collusion with any other bidder or bidders. Participants in such collusion shall be disqualified from submitting bids on any further work.
- (c) If a bidder is not qualified for the work involved or to the extent of his bid.

All Board Members  
July 12, 1978  
Page 2

- (d) Unsatisfactory performance record, judged from the standpoint of conduct of work, workmanship, or progress, as shown by past or current work for the Owner.
- (e) Uncompleted work, whether for the Owner or otherwise, which might hinder or prevent the prompt completion of the work bid upon.
- (f) Failure to pay or settle bills for labor or materials on any former or current contracts.
- (g) If the bidder has previously defaulted in the performance of or failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract.
- (h) Any other inability, financial or otherwise, to perform the work.
- (i) A bidder not authorized to do business in the State of Washington.
- (j) For any other reason deemed proper as determined from a pre-award survey of bidders' capability to perform or provide the City with an acceptable affirmative action for equal employment opportunities and/or utilization of minority/women business enterprises.

Also, attached is a section from Bid Procedures and Conditions Standard Specifications, State of Washington, 1974 which can be reworded to adapt to City's needs. This can be used for prequalification of bidders when deemed necessary.

I would appreciate your review, comments and recommendations on the above proposed wording and prequalification requirements as soon as possible so that we may be ready for the change in bid evaluation when the new Ordinance is passed. Anyone listed below is also invited to submit a recommendation.

BIM:wb

cc: Mayor Charles Royer  
O.M.B.  
City Attorney  
City Council  
Council Audit Staff

1-02

**1-02 BID PROCEDURES AND CONDITIONS**

**1-02.1 Prequalification of Bidders**

Before being furnished a bid proposal on any contract a prospective bidder shall submit to the Commissioner a standard plate statement of financial ability and experience, including a complete statement of financial ability and experience of such bidder in performing state highway road or other public work. Such person authorized to take acknowledgment of deeds and shall be submitted once a year and at such other times as the Commissioner may require.

A prospective bidder who has not been qualified or from whom a supplemental questionnaire is due, may not be considered for qualification or given a bid proposal unless such bidder has submitted his prequalification questionnaire and financial statement or supplements thereof, at least seven calendar days before the date fixed for opening bids on the contract on which such bidder desires to bid.

If two or more prospective bidders desire to prequalify and bid jointly as a joint venture on a single contract, each must also file a questionnaire and financial statement and they must also prospective bidders desire to bid to jointly qualify and bid jointly as a joint venture on more than one contract, they must submit a joint questionnaire and financial statement and also an agreement they expect to joint venture. Any agreement to joint venture required to be filed hereunder shall be signed by each of the bidders. If any of the bidders is a corporation, the agreement must be accompanied by a resolution of the corporation authorizing such joint venture agreement and designating the officer who is authorized to sign such joint venture agreement on behalf of such corporation.

The Commissioner shall qualify a bidder as to the type of work and the amount of work for which a bidder is prequalified. The Commissioner may reduce the amount for which a bidder is prequalified or withdraw prequalification if the Commissioner feels that such reduction or withdrawal is justified because of outstanding work the bidder has under contract, whether with the State or not, or because of unsatisfactory performance on a prior or current State contract.

If the Commissioner is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement, he may refuse to furnish a prospective bidder a bid proposal form and any bid proposal of such bidder shall be disregarded. Such refusal shall be conclusive unless appeal therefrom to the Superior Court of this State be taken within five (5) days after which appeal shall be heard summarily within ten (10) days after the same is taken and on five (5) days' notice thereof to the Commissioner. *BEAD*  
Prequalification shall not bar the Commissioner, upon the opening of bids on any contract, from determining that any bidder is

*SKD Specs*

**Bid Procedures and Conditions**

not a responsible bidder insofar as performance of such contract is concerned.

When submitting a bid, it is the responsibility of the Contractor to determine that the amount of his bid plus the amount of outstanding work with the State does not exceed the amount of outstanding work with the State. If the amount of a bid submitted by a bidder has under contract with the State, would exceed the amount of the bidder's prequalification, the Commissioner may determine that the bidder is not a responsible bidder insofar as performance of such contract is concerned and may not award the contract to the bidder.

**1-02.2 Plans and Specifications.**

Informational copies of plans and specifications will be placed on file in the offices of the District Engineers of the Department, in the office of the County Engineer in the county in which the work is situated and the chapter offices of the Associated General Contractors of America, at Seattle, Spokane, Tacoma and Portland.

Plans and specifications may be obtained from the Director of Highways at Olympia, Washington, by payment of the amount set forth in the call for bids. Payment of the fee shall accompany a request for plans. If such fee is paid by check, it shall be payable to the State Treasurer-Department of Highways.

On special projects, a refundable deposit may be required in lieu of the fee specified above to assure a return of such deposit. For all plans and specifications and for the return of such deposit, the amount of any deposit required will be indicated in the call for bids. Plans and special provisions, after award of contract, will be awarded on the following basis:

Contractor	No. of Sets	Cost
1. <del>Contractor</del>	10	No cost and furnished automatically upon award.
2. <del>Contractor</del>	10	No cost, furnished only upon request on projects where the plan sheets number more than 100.
3. <del>Contractor</del>	1	No cost and will be furnished only upon written request on projects where plan sheets number more than 100.
4. <del>Contractor</del>	1	No cost and will be furnished upon request by the prime contractor for an approved subcontractor or material supplier.

*State of Wash 1972*

BOARD OF PUBLIC WORKS

1978

#3

BOARD OF PUBLIC WORKS

Jan - June 1978

UNRECORDED SUBJECT FILE



BPA

PAUL A. WIATRAC, CITY ENGINEER

Seattle Board of Public Works

Betty L. McFarlane, Executive Secretary  
Charles Royer, Mayor



Re: Draft Ordinance - Board of Public Works

June 29, 1978

Mr. Casey Jones, Director  
Office of Management and Budget  
City of Seattle

Dear Mr. Jones:

I have reviewed the draft Ordinance establishing the Board of Public Works and offer the following comments and suggestions:

In my opinion, the Ordinance should include a paragraph about the duties and appointment of the Executive Secretary of the Board. This is a vital component of the Board of Public Works.

Even though the Executive Secretary's duties are set forth in the Civil Service Classification for the position, I believe it is proper to include the Executive Secretary's appointment and role in the Board of Public Works' Ordinance so all who read same will have a complete description of the Board of Public Works and of what it is comprised.

Suggested wording:

APPOINTMENT AND DUTIES OF EXECUTIVE SECRETARY: The Board shall appoint, subject to Civil Service, an Executive Secretary who shall manage the department, oversee and implement the direction of public works activities and perform such other duties as the Board may direct. He/she shall keep his/her office at the place where the meetings of the Board are held, which shall be kept open during business hours, and at such other hours as the Board may direct. (end)

As you are aware, it is the Executive Secretary's responsibility to assure for the City and the Board that all contracts for public works projects are developed and carried out in a manner consistent with all applicable City ordinances, Board rules, and state and federal laws. All specifications, change orders, payments to contractors, payrolls, etc. must be checked to ensure conformance with proper bidding procedures and laws. The Board of Public Works' Ordinance would be incomplete without mentioning the appointment of the Executive Secretary to carry out the Board's direction in this regard.

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Paw		
A. Staff		

Board of Public Works Department, 303 Municipal Building, Seattle, Washington 98104, (206) 625-2766  
Board of Public Works: Paul A. Wiatrak, P.E., Chairman, City Engineer; Walter R. Hurdley, Supt. of Parks and Recreation;  
Kenneth M. Lowthian, Supt. of Water; Gordon Vickery, Supt. of Lighting; William J. Gasten, Acting Supt. of Buildings

Mr. Casey Jones  
Page 2  
June 29, 1978

In other areas of the draft Ordinance I have made comments regarding the omission of the Board of Public Works in management of the public streets and places. Attached for your reconsideration are these communications. I sincerely hope that the Board will be able to continue this public service. Our record is good and it would be wasteful to train others to do a job we are already trained to do, and do well. Since public works involve other utilities, gas, steam, telephone, cable communications and doing work in the public streets, it is good government to have the Board oversee the activities of all concerned. This solves the problem of overlapping jurisdictions and proper coordination of these uses.

In Sec. 2 (c) of the proposed Ordinance, the wording is inconsistent with state law, RCW 39.12, which requires that anyone employed on a public works contract be paid not less than the prevailing rate of "wage for an hour's work in the same trade or occupation in the locality within the state where such labor and work is to be performed."

The Washington State Department of Labor and Industries determines the amount of prevailing wages, not the City. The rate of pay for City employees performing like duties would in many cases be less; therefore, state law prevails over the present wording in the draft Ordinance. The City must not be less restrictive.

I also recommend that Sec. 3 (a) be amended to read: (a) Ensuring that all public works activities and contracts for public works projects awarded by the City are developed and carried out in a manner consistent with all applicable City ordinances, Board rules and state and federal law.

This will enable the Board and the Executive Secretary in its behalf to oversee the activities of public works departments to assure that they are not accomplishing public works in-house or by day labor which should be done by contract, according to law. Opening bids and awarding projects is important, but a vital part of the entire checks and balance system extends to overseeing and directing public works departments in all areas of public works activities, not just contracts.

Thank you for the opportunity to comment on the draft Ordinance.

Yours truly,

BOARD OF PUBLIC WORKS

*Betty L. McFarlane*  
Betty L. McFarlane  
Executive Secretary

BLM:wb

BPW:

PAUL A. WIATRAK, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

/ June 28, 1978

To: All Board of Public Works Members  
Mayor Charles Royer

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Vacation

I will be out of town on a short vacation July 3, 5, 6, and 7. During my absence, Diana Patterson will be in charge of the Department and will assist the Board at its meeting July 5.

Please contact her if you have any need for assistance during the week.

BLM/jw

cc: Bob Royer

SEATTLE ENG DEPT  
JUN 29 7 35 AM '78

ROUTING	DATE	INITIAL
ACTION		
FILE		
INFORMATION		
<i>Paul</i>		
		<i>H. Stapp</i>

BPW

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

✓ June 28, 1978

To: All Board of Public Works Members

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Submittal of Agenda Items

Please be advised, due to the holiday on Tuesday, July 4, that in preparation for the Board meeting of July 5, submittal of agenda items shall be by 5:00 p.m. Friday, June 30, 1978.

Thank you.

BLM:jrn

- cc: John Skommesa, Engineering
- Doug Howell, Engineering
- Evelyn Larson, Parks
- Bill Rashkov, Water
- John Hansen, Lighting
- R. L. Snyder, Building
- Chuck Hennebry, Building

ROUTING	DATE	INITIAL
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INFORMATION		

*Pac*  
*M. Staff*

JUN 29 7 35 AM '78  
SEATTLE ENG DEPT

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

June 22, 1978

JUN 23 7 23 AM '78

SEATTLE ENG DEPT

ROUTING	DATE	INITIAL
FILE		
INFORMATION		
(Paw)		
EMW	JSL	

To: Carol Lewis, Mayor's Office

From: Betty L. McFarlane, Executive Secretary *blm*

Re: Management of Public Street Area -  
Board of Public Works Draft Ordinance

I have been informed by Steve Williams of OMB that the new draft ordinance establishing the responsibilities of the Board of Public Works does not include our coordinating street use activities. I have not received the draft yet, but he said the ordinance limits the Board's jurisdiction to public works contracting activities, and deletes management of public street area.

I was concerned because it was my understanding that the Mayor had a positive attitude about our providing this important public service. I believe that there must be a place where the public and others can go for appeals from the decisions of departments when permits are denied. Also, some types of temporary street use requests require careful handling to include all concerned prior to consideration of a permit. My staff is dedicated and trained to carry out this responsibility efficiently and productively. We have been successful in cutting red tape and making things work which otherwise would be difficult for the public to manage, due to the multitude of ordinances which overlap and pertain to various types of uses. Permit counter people do their jobs well, but even if they know the many other ordinances which may be involved besides their particular permit, they are not set up or trained to coordinate these with others.

Some of the ordinance uses which the Board of Public Works administers are: waterways, street fairs, festivals, sidewalk cafes, street vacations, neighborhood block parties, food cart permits, newsstand regulations, traffic diverter systems, etc.

Carol Lewis  
June 22, 1978  
Page 2

All of these uses require coordination with many other departments: Health, Parks, Licensing, Fire, Police, Engineering, Metro and abutting owners. It would be a tremendous burden on the public to have to go from one department to another, when we can bring it all together for them in one area. Many items of an ordinary-type are delegated to the permit counters for handling as long as they are consistent with ordinance and Board regulations. The public has a right to appeal a department's denial of a permit without having to burden the Mayor or City Council. The matter can be handled by the Board of Public Works after hearing both sides of the issue in open public meeting.

Attached is a communication I wrote to the Office of Management and Budget some time ago for the Drafting Committee's consideration. It recommended that we be allowed to continue to provide this public service in the interest of the City of Seattle.

BLM/jw

cc: Robert Royer  
Richard C. Kelley  
Board of Public Works Members  
City Council  
Office of Management and Budget

Att.

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

March 24, 1978

To: Director, Office of Management and Budget -  
Attn.: Steve Williams, Analyst

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Draft Ordinance Board of Public Works

The Board of Public Works provides much more in administration of public works than just opening of bids and awarding of contracts. The Board manages public street areas and acts as a coordinating agency on permit requests for civic events such as Seafair, Fat Tuesday, University District Street Fair et al, neighborhood block parties and permits for sidewalk cafes, food carts, flower carts, etc., to assure that all concerned are contacted and input received prior to action. We coordinate such requests for use of street area with Utilities, Traffic Engineer, Department of Licenses and Consumer Affairs, Fire, Police, Health, Metro, Parks, abutting owners, and in some cases, special District Boards and others.

The Board of Public Works, under the present Charter, is responsible for management of public works, buildings, wharves, docks, bridges, viaducts, streets, sewers, public places and grounds, etc. If the Board did not handle the many permit requests, complaints and appeals connected with these, the Mayor and the City Council would be deluged with administrative matters and would not be able to devote time to the policy and legislative decisions of the City. The Board sets forth rules and regulations to guide concerned departments in issuing delegated permits. Variances and appeals are considered by the Board on a merit basis. The items that are not delegated to others are those permits which require coordination; and in this regard, the Board provides the public with a one-stop service. We believe that it is important to continue this public service in the interest of all concerned. Much red tape and bureaucratic handling is eliminated by having one agency responsible for coordinating and administering the use of public area.

The Board settles differences between public works departments of overlapping jurisdiction and acts as an appeals Board for citizens from the actions of its departments. Departments would be in an autocratic position without appeal procedure if the Board were not authorized to manage and direct its departments in this regard.

It would be unfair to expect citizens to deal separately with each department involved; and such action would result in a duplication of effort, complaints, loss of time and inadequate response to the public on the part of the City.

Director, O.M.B.  
Attn.: Steve Williams  
March 24, 1978  
Page 2

Since we feel it is the present administration's policy to provide the best overall service to the public, we sincerely hope that the Board can continue to manage public streets under the present Ordinances and regulations authorizing same, to provide this needed service. Thank you for this consideration.

BLM/jw

cc: Mayor Charles Royer  
Bob Royer  
Board of Public Works Members

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

March 27, 1978

To: Steve Williams, Office of Management and Budget  
From: Executive Secretary, Board of Public Works *BLM*  
Re: Work Measurements for my position

Direction of Public Works:

Coordination of five Board Departments,  
contract activities, overseeing checking of  
payrolls, specifications, enforcing and  
interpreting laws, rules and regulations,  
handling complaints, inquiries, deciding  
matters which develop when overlapping  
jurisdictions present & differences of  
opinion, etc., signing payments to con-  
tractors, plans and specifications,  
contracts.

35%

Administration of Department:

Includes budget, payrolls, record-keeping,  
hiring, firing and overseeing Cable Office  
activities.

25%

Implementing for the Board of Public Works  
the management of Public Streets - Service  
to the Public:

40%

By coordinating permit activities for  
civic events; i.e., Seafair, Fat Tuesday,  
(perhaps Tall Ships), University District  
and Fremont Fairs, neighborhood block  
parties, races, flower and food carts, etc. -  
with abutting owners *Waterways*  
Police *Traffic Code*  
Fire *Sign Code*  
Traffic Engineer  
Health  
Licenses & Consumer Affairs  
Metro  
Parks  
all concerned.

BLM/jw

*The other time over 100% or above  
is spent drafting new and updating  
Rules & Regulations, etc. going to meetings  
giving testimony -*

*BPW*

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT  
M E M O R A N D U M

✓ June 9, 1978

To: All Board of Public Works Members

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Federal Bid Conditions

The Human Rights Department has received approval from the Office of Federal Contract Compliance on the amendments to the Federal Bid Conditions. Please advise your people that effective June 5, 1978, the attached new federal bid conditions are to be inserted in all federally funded projects in place of the King County Plan Bid Conditions.

BLM:jrn

cc: Doug Howell, Engineering  
Bob Snyder, Building  
Evelyn Larson/John Tiemeyer, Parks  
Bill Rashov, Water  
John Hansen, Lighting

Attachments

SEATTLE ENG DEPT  
JUN 13 7 24 AM '78

ROUTING	DATE	INITIAL
ACTION		
FILE	1	
INFORMATION		
<i>pac</i>		
<i>MEM/RJH</i>		
<i>HOW/RAC</i>		

*Orig + atts - Human Rights Dept*

*AC*

*BPW*

LAUL A WIAIRAK, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

ROUTING	DATE	INITIALS
ACTIC		
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INFORMATION		

June 6, 1978

To: All Board of Public Works Members  
and Vivian Caver, Director, Human Rights Department

From: Betty L. McFarlane, Executive Secretary *blm*

Re: Minority Business Enterprises  
Executive Policy 77-100

Attached for your review are amended bid documents which will assist us in receiving information necessary for reporting to the Human Rights Department the percentage of Minority Business Enterprise participation on public works contracts:

- 1) Subcontractor Approval Form --  
Adds space for including dollar amount of subcontracts.
- 2) Proposal/Signature Sheet --  
A space is provided on the last page of the proposal for bidder to submit with his bid the names of principal subcontractors, the dollar amount of subcontracts, and requesting to designate whether minority or women-owned businesses will be utilized on the contract.
- 3) A new form showing procurement of supplies from Minority/Women Business Enterprises. This form will be added to the specifications to provide us with information on Minority Business Enterprise suppliers.

We would appreciate any comments by June 19, 1978

BLM:jrn

- cc: Willie Winston, Human Rights Department  
Bob Royer, Mayor's Office  
Dick Kelley, Mayor's Office  
Doug Howell, Engineering  
Evelyn Larson/John Tiemeyer, Parks and Recreation  
John Hansen, Lighting  
Bob Snyder/Chuck Hennebry, Building  
Bill Rashov, Water

Attachment

SEATTLE ENG DEPT  
JUN 9 2 36 PM '78

*Orig: Human Rights Dept*

INSTRUCTIONS TO BIDDERS

and

BIDDERS' CHECKLIST

Contractors are requested to identify the dollar amount of Minority Business Enterprise participation on this contract, particularly in the area of subcontracting and the procurement of supplies. This information is to be submitted with your bid and will enable the City to know the percentage and dollar amount of work being accomplished and materials supplied on public works projects by Minority Business Enterprises.

LIST OF SUPPLIES BIDDER INTENDS TO PROCURE  
FROM MINORITY AND WOMEN SUPPLIERS  
ON THIS PROJECT

	<u>Names of Minority/Women Suppliers</u>	<u>Supplies to be Procured</u>	<u>Amount</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

\_\_\_\_\_  
(Signature of Bidder)

\_\_\_\_\_  
(Printed or Typed Name of Bidder/Title)

\_\_\_\_\_  
(Date)

BASIC PROPOSAL TOTAL \$ \_\_\_\_\_

Firm: \_\_\_\_\_

By: \_\_\_\_\_

Business Address \_\_\_\_\_  
Street

City State Zip Code

Telephone No.: \_\_\_\_\_

State of Washington Contractor Registration No. \_\_\_\_\_

City of Seattle Contractor License No. \_\_\_\_\_

Addenda: No. \_\_\_\_\_ Date: \_\_\_\_\_

No. \_\_\_\_\_ Date: \_\_\_\_\_

Principal Subcontractors to be utilized on the contract:

Name \_\_\_\_\_

Address \_\_\_\_\_

Designate whether Minority or Female Owned (Circle "M" or "F")

Dollar Amount of Subcontract \$ \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Designate whether Minority or Female Owned (Circle "M" or "F")

Dollar Amount of Subcontract \$ \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Designate whether Minority or Female Owned (Circle "M" or "F")

Dollar Amount of Subcontract \$ \_\_\_\_\_

(Note: Route in numerical order indicated.)

CONTRACTOR:

DATE:

ADDRESS:

PROJECT:

(1)  
DEPARTMENT HEAD  
CITY OF SEATTLE

BPW PROJECT NO.: \_\_\_\_\_  
SPEC. NO. (Where Applicable): \_\_\_\_\_

Dear Sir:

We respectfully request approval of the following subcontractors on the above-referenced project. We fully understand that we are responsible for our subcontractors' AFFIRMATIVE ACTION requirements during the term of their contract. Attached for Human Rights Department's information is a list of the requested subcontractors' projection of minorities and female employment for said contract.

Name & Address of Subcontractor	Type of Work	State License No.	Designate if Minority or Female Owned (Circle "M" or "F" and Dollar amount of Subcon.
_____	_____	_____	\$ _____ M or F
_____	_____	_____	\$ _____ M or F
_____	_____	_____	\$ _____ M or F
_____	_____	_____	_____

Contractor's Signature \_\_\_\_\_

Date \_\_\_\_\_

(2)  
HUMAN RIGHTS DEPARTMENT RECOMMENDS  
APPROVAL OF ABOVE SUBCONTRACTORS ( )

(3)  
OFFICE OF WOMEN'S RIGHTS DEPARTMENT RECOMMENDS  
APPROVAL OF ABOVE SUBCONTRACTORS ( )

DISAPPROVES THE FOLLOWING:

DISAPPROVES THE FOLLOWING:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Human Rights Representative \_\_\_\_\_ Date \_\_\_\_\_

Office of Women's Rights Representative \_\_\_\_\_ Date \_\_\_\_\_

(4)  
TO: BOARD OF PUBLIC WORKS

\_\_\_\_\_ DEPARTMENT RECOMMENDS APPROVAL OF ABOVE SUBCONTRACTORS ( )

DISAPPROVES THE FOLLOWING:

\_\_\_\_\_  
\_\_\_\_\_

APPROVED/DENIED BY  
BOARD OF PUBLIC WORKS  
(Amended 6/6/78)

Department Head or Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_

Executive Secretary, Board of Public Works \_\_\_\_\_ Date \_\_\_\_\_

PAUL A. WIATRAK, CITY ENGINEER

BPW

Re: Spreadsheet  
of replies to  
how to evaluate  
"or equal"

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP

6/5/78  
(date)

All BPW Members  
(referred to)

Blm  
(referred by)

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: Out of these  
rec. & comments -

What are the important items to retain for a 60 BPW adopted guide for eval. "or equal."

Action requested no later than  
Specific should be specific, as City's Lighting Dept's. (date)  
I think a req. for submitting prior to award any requests for changes is good.

ROUTING	DATE	INITIAL
ACTION		
AEM/DJA		
FILE		✓
INFORMATION		
PAW		
EMW/HEL		DR
PMB		

SEATTLE ENG DEPT  
JUN 6 10 35 AM '78

PROCEDURES FOR: EVALUATING "OR EQUAL"

ENGINEERING DEPT.  
4-24-78

BUILDING DEPT.  
4-24-78

CRITERIA:

1. Arch.'s rec. based on design criteria, material strength, aesthetics, etc. Longevity, maintenance, operating costs, safety, efficiency, general adaptability or compatibility with existing equipment & conditions.
2. Lab report based on material, structural adequacy & uniformity. No comment.
3. Workmanship. Workmanship as aesthetics is highly subjective & dependent on one's perspective.
4. Whether or not a firm is minority or women's business enterprise meeting the "or equal" status. *City doesn't* Do not believe in best interest of City to dictate what specific material must be purchased from a minority or women's business enterprise.

*City's resp. for determ. "or equal" only.*  
Other Engrg. recommendations:

1. Engr. or Arch. be responsible for determining material/products to be used in his design.
2. Use Stand. Ref. Specs such as ASTM, AASHO, etc.
3. Re: Brand Name/Proprietary - Specify at least 3 alternates, any of which OK
4. When substitutions allowed, submittals to be evaluated prior to bid opening. (Extend advtg. period, include cut-off date, after which further submittals would be rejected.)
5. Submittals for material/product OK other than those specified be made avail. to all bidders prior to bid opening.
6. City-wide (or Dept.) Standardization or Product Approval Committee to evaluate products/materials; & lists of same made avail. to all bidders.
7. Specs should be written to achieve:
  - List of choice of materials--controlled by Engr. or Arch.;
  - Competition;
  - Fairness in attracting other products designer may not have been aware of during design phase;
  - Elimination of bidders' risk in proposing products other than those specified;
  - Closer bidding with less gamble to contractor;
  - Reduction in bid peddling;
  - Flexibility;
  - Evaluation of equality at proper time, by proper authority.

CRITERIA:

- Primary factors in order of importance:
1. Performance - as described by technical specs as to strength, speed, output &/or other factors. Can usually be measured & objectively determined.
  2. Configuration - described in drawing; usually. Must be compatible & acceptable as to size, shape & connections to other parts of the system where applicable. (Usually can be measured & objectively determined.)
  3. Appearance - as described in drawing; &/or specs as to shape, color, finish, texture. (Often more difficult to measure & involve subject determination)

Evaluating "Or Equal" must be responsibility of designer/spec writer. Some criteria can be published, but in most cases it will still req. judgment in determining which product/material should be selected.

*BPW Policy for Utiliz  
to MBE's and  
Note: State law says  
Contractor must  
consider the grant  
of subcontracts  
to said minority  
bidders (def. inc. women  
as min.  
on the basis of  
substantially equal  
proposals in the  
light most favorable  
to said min. bus.*

*Blm 6/5/78*

*The above is a  
part of contracts.*

L I G H T I N G D E P T.

4-20-78

Will the substitute:

1. Perform function of specified product?
2. Be of quality (workmanship, strength, etc.), matching/exceeding that specified?
3. Appearance compatible with proj. design?
4. Match existing material/condition?
5. Local repair facilities w/readily available parts?
6. Same length or longer period of prior svc., as indication of durability or serviceability?
7. Meet specified standards?
8. Require design modifications by owner?
9. Same or better warranty?

Many problems can be eliminated by requiring substitutions for all (or major) items to be submitted prior to bid opening. (SEE CITY LIGHT "INSTRUCTIONS TO BIDDERS" -- ATTACHED.)

On projects involving major equipment, in addtn. to prior approval City Light contemplates making mandatory that items proposed be listed in spaces to be provided in the Proposal.

Although Wash. State Law dictates inclusion of "or equal" clause, some points in Construction Specifications Institute document (ATTACHED) are noteworthy-- espec. Substitution Request Form, which can be used w/o violation of State Law.

P A R K S & R E C R E A T I O N D E P T.

4-17-78

No objection to 4 criteria in BPW 5/28 Memo.

Parks' Criteria:

1. Quality & workmanship;
2. Same or equal material--sometimes technical data, lab reports, samples or other information may be requested for evaluation;
3. Maintenance considerations -- Parks' history of any maintenance problems, spec. tools, cost & availability of spare parts, interchangeability w/existing system, etc.;
4. Guarantee period -- 1 mfctr. may offer longer period;
5. Esthetics -- quality workmanship & esthetics usually prime considerations, but since not easily defined could remain subj. to challenge by a supplier.

SEE ATTACHED "BOILER PLATE" SPECS. (Burden of proof of equal should remain with contractor.)

Suggest Depts. be required to specify 2 products instead of 1. Quite a few situations where we are only aware of 1 that meets our needs. This does not preclude a mfctr. producing one or contractor locating an "or equal" we didn't find. Requiring 2 may be overly restrictive in some cases.

PARKS DEPARTMENT ATTACHMENT

of identification as such, two sets of drawings and specifications shall be initialed by the Contractor, and each party shall retain one set of the signed drawings and specifications. The drawings and specifications are the property of the City of Seattle and are to be returned to the Park Engineer before final payment is made under the contract. One set of drawings and specifications is to be kept constantly on the work.

XXII. VERIFICATIONS OF DRAWINGS, ETC.:

The Contractor must thoroughly examine the specifications and drawings and especially check and verify the figured dimensions, immediately after the contract is awarded and before beginning work. Figured dimensions must be followed in preference to measurements by scale, and large scale drawings shall take precedence over those of smaller scale. The Contractor will make no alterations or corrections in drawings and specifications. Should any error or discrepancy be discovered in the drawings or specifications, or should any question arise as to the true intent and meaning of any particular part of the same, the question shall be referred to the Park Engineer for decision.

XXIII. SHOP DRAWINGS:

Contractor shall obtain required setting and shop drawings and, after verification of all field measurements required, shall submit four copies, with letter of transmittal, to Park Engineer. Park Engineer will check setting and shop drawings and either approve or disapprove details and materials, returning two copies to Contractor with notations of any corrections required. Contractor to resubmit corrected drawings as requested by Park Engineer. Park Engineer's approval does not relieve Contractor from responsibility for errors in drawings.

XXIV. DETAIL DRAWINGS:

The Contractor, if required, shall prepare, in consultation with the Park Engineer, a schedule fixing the latest dates at which the various detail drawings and decisions will be required for the proper conduct of the work, and the Park Engineer will from time to time, as necessary, furnish such detail and working drawings. The work shall be executed in conformity therewith, and with such instructions, directions, and explanations, not inconsistent therewith, as may from time to time be given by the Park Engineer.

XXV. SUBSTITUTIONS:

It is understood that the Park Engineer shall be considered the sole judge as to material and workmanship used in this work, and the Contractor shall, in no case, substitute other material for that specified, except with the written permission of the Park Engineer. It is further understood that, when the terms "equivalent" or "equal" occur in these specifications, the Park Engineer shall have the sole right to determine what, if any article, may be substituted. All material substituted for material specified as requested by the Contractor shall be guaranteed to be equal or better than the material specified and shall not be limited by a one-year maintenance guarantee. Substituted materials which are well known and which have a background and record of proven performance equal or better in all respects to that specified may

be approved subject to the one-year maintenance guarantee. Other substituted material shall be guaranteed for a period of not less than five years from date of final acceptance. Bids must be based upon the specific articles and materials named in the specifications. Substitutions may be made ONLY under the following conditions:

1. Ten or more days prior to bid opening:

Prime bidders may submit to the Park Engineer written requests for approval of articles or materials which they guarantee equal or superior to those specified. Such requests shall be accompanied by complete descriptions and technical data. Approval or rejection of the proposed substitutions will be made by addenda issued to all bidders.

2. At the time bids are received:

Prime bidders may submit, on a separate sheet enclosed with the bid form, a list of proposed substitutions which they are willing to guarantee, and stating the additions to or deductions from bid prices in case the substitutions are allowed. Technical data shall be submitted as above. The Owner reserves the right to reject all such proposals, and they will not be used to determine the low bid.

3. After the contract is signed:

Substitutions of articles of well-known brand names are subject to the approval of the Park Engineer.

Substitutions of materials and articles other than well-known brand names will only be made in exceptional cases where the Contractor submits evidence satisfactory to the Park Engineer that, through no fault of his own, specified or otherwise approved items cannot be obtained in time to avoid delay in the work. Such substitutions must have the approval of the Park Engineer.

**XXVI. ADDITIONS OR DEVIATIONS:**

The Park Engineer shall have the right, at any time during the progress of the work, to make additions to, deviations from, or deductions from the work as called for by the drawings and specifications and the contract shall not be invalidated or the bond affected thereby. Such additions, deviations, or deductions, however, shall be valid only when authorized in writing signed by the Park Engineer. In all cases such authorization shall state the amount to be added to or deducted from the contract price. No claims for extra work involved in such additions, deviations, or deductions, shall be considered or allowed unless such extra work shall have been previously ordered by the Park Engineer in writing, and claims for such extra work, when so ordered, shall be presented in writing to the Park Engineer on or before the fifteenth day of the month following that in which said extra work was done; otherwise such claim shall be forfeited and waived. In case any such extra work shall be required, the Board of Public Works shall have

INSTRUCTIONS TO BIDDERS (Cont.)

The work embraced in the following Proposal and Contract shall be under the direct supervision of the Superintendent of Lighting, subject to the acceptance and approval of the Board of Public Works. It shall be begun immediately upon notice from the Superintendent of Lighting to begin work; and shall be completed within 210 days (Sundays and holidays included) after the date of such notice.

Bidders are notified to examine thoroughly these instructions, the proposal, the form of contract, the plans and specifications. If there be any doubt or obscurity as to meaning of the same, intending bidders should ask the Superintendent of Lighting for an explanation before submitting their proposals.

Permission will not be given for the withdrawal or modification of any bid or proposal.

Bids will not be received if detached from the form of contract with which they are bound, nor shall any of the accompanying papers be detached therefrom, but the entire package must be unbroken, in good order and enclosed in a sealed envelope, endorsed with the name of the bidder and the name of the work.

Bids must be written with ink in both words and figures for item contained in the proposal provided for this improvement to the extent that the proposal represents a complete integral project. In case of discrepancy between written words and figures, the written words shall govern.

Quantities listed on the proposal blanks are for the purpose of comparing bids only.

The advertisement for bids provides that a deposit for plans and specifications will be required from each bidder. This deposit will be returned to him upon return of the plans and specifications in good condition to the office of the Department of Lighting designated in the advertisement for bids, within ten (10) days after the bid opening date. Failure to comply will result in forfeiture of the deposit for the plans and specifications.

The Board of Public Works reserves the right to reject any or all bids, and to waive informalities.

Any bulletins or addenda issued during the time of bidding are to be covered in the proposal, and in closing a contract will be a part thereof.

SUBSTITUTIONS BY BIDDERS

In order to establish a basis of quality, certain materials or articles are specified by designating a particular manufacturer's name, brand or number. Whenever an article is specified by giving the manufacturer's name, it is understood that the words "or equal" follow thereafter except where noted to be furnished without substitution. It is not the intent of the specifications to exclude other materials or articles that measure up to the standard of those specified.

Should the Bidder desire to make substitutions for any of the materials listed below, he shall first secure the written approval of the Superintendent of Lighting. Requests for substitutions shall be made in writing and received by the Superintendent of Lighting not later than ten (10) calendar days prior to the bid opening date. No substitutions for the materials listed below will be permitted after the bid opening date.

<u>Item</u>	<u>Section</u>
Aluminum doors and windows	8B
Overhead doors	8C
Rolling doors	8D
Luminaire ceiling system and related ventilation and lighting equipment.	9C, 15E and 16A
Ceramic tile	9D
Toilet compartments	10C
Mechanical equipment	15B, 15C, 15D, 15E, 15F, 15G and 15I
Light fixtures and panelboards	16A

Bidders shall provide such information, data, drawings, samples and other evidence as may be required of him to assist the Engineer in determining whether a proposed substitute will satisfactorily meet the requirements of the specification and the burden of proof shall be upon the Bidder.

All requests for substitutions made prior to and after opening of bids shall be accompanied by the following written statements:

1. A statement signed by an authorized agent of the manufacturers guaranteeing that a proposed substitute is equal to or better than the specified product in all respects.
2. A statement regarding the difference in cost between the proposed substitute and the specified product.
3. A statement that the firm proposing a substitute will bear all costs which may be incurred by City Light to change drawings and specifications so that a proposed substitute may be incorporated in the design of the project.

Requests for substitutions proposed for materials other than those listed above shall be made promptly after the award of the contract.

# CONCEPT

PUGET SOUND  
CHAPTER  
CSI

March 1978  
First Draft

The  
purpose  
of the CONCEPT  
PROGRAM is to encour-  
age and stimulate the sharing  
and widespread use of ideas and tech-  
niques which may contribute to improved edu-  
cation, management, production, quality of service  
and ultimately the image of the entire building industry.

## ELIMINATION OF 'OR EQUAL' CLAUSE

### 1. Preface

This first draft document has been prepared by the Specification-Methods Committee, Puget Sound Chapter, Construction Specifications Institute, and is submitted for review and comment.

Suggestions, constructive criticisms and information on similar specifying efforts will be appreciated. All responses should be returned to:

Specification-Methods Committee  
Puget Sound Chapter, CSI  
1200 Westlake N. #414  
Seattle, Washington 98109

Reprinting and further distribution is permitted and encouraged.

### 2. Statement of Concept

Elimination of the "or equal" clause in contract documents and specifications will eliminate confusion and provide all concerned an understanding as to what is wanted with no substitutions allowed without approval granted prior to bid time.

The substitution request form will allow the specifier to control and allow qualified competition. Suppliers familiar with their product will prove the equal quality and performance by completing this form and submit with substantiating data and or samples.

### 3. Description

The "Instructions to Bidders" section of contract documents should specifically outline the policy and procedure for prior approval of substitutions. The following paragraphs are suggestions to appear in Section 01640 with written substitution request forms and substantiating data be received at least 14 days prior to bid date:

1. Substitutions: Except as the drawings and specifications may be modified prior to the opening of bid by addenda, the successful contractor will be held to furnish under his lump sum bid all work as specified.

Substitution request forms must be received by architect at least 14 days prior to bid date.

Addendums must be issued at least 7 days prior to bid date listing approved substitutions with a complete description of each including manufacturer, trade name, model, finish, type, etc.

Approved alternates to the base bid with blanks for adds and deducts will be shown on the bid form.

All substitutions after the contract is signed will be evaluated with accompanying credit or added value to owner.

## 4. Advantages & Benefits

### Benefits to the Specifier

1. You retain complete control of the job and you are the judge of what is or is not equal.
2. You have the opportunity to discuss specified materials and alternates with the client, and if substitutes are insisted upon, he assumes all responsibility.
3. You maintain good faith with all suppliers and bidding contractors because a firm base for evaluation of bids has been established.
4. You shorten specifications.
5. You prevent loss in product quality caused by bid shopping.

### Benefits to the Owner

1. Your architect can give you the benefit of his training and experience in the choice of the materials that go into your building.
2. Good customer and public relations can be maintained because everyone who can meet the intent of the plans and specifications has a chance to bid.
3. Because a firm base for bidding and evaluating materials has been established, many major choices can be made before contract is signed.

### Benefits to the Bidders

1. Creates healthy competitive bidding and discourages cut-throat tactics that do no one any good.
2. Saves time and money by discouraging foolish bidding.
3. Builds confidence for designer and owner.
4. Creates better understanding of problems facing designer and owner and results in more complete job cooperation.

## 5. Background History

The "or equal" clause in specifications is undoubtedly the most damaging clause in the construction industry today. It hurts the architect and his client as well as quality manufacturers because it allows price-cutters and chiselers the opportunity to "work over" the job. When the architect uses the "or equal" term he might just as well say: "provide the cheapest available product to get the job done." No owner would appreciate that statement in his specifications. Yet, in most cases, this is exactly what the owner gets when the architect loosens his specification with "or equal". It is a fact that no two products are really equal, just as no two companies provide equal research, engineering, production capability, or service.

## 6. Credits & References

Portland Chapter CSI substitution form used as guide, Jim Berry, Armstrong Cork Co., guest editorial; is the "or equal" clause an invitation to chisel?, Western Building Design, April 1975.

### CONCEPT PUBLICATION:

Specification-Methods Committee, Puget Sound Chapter, Construction Specifications Institute

Jim Davis and Jim Palmer, Chairmen; Ernie Morre, Larry Musil, Al Thurman, Jay Snellenberg, Doug Jacobson, committee members.

## 7. Attachments

Substitution request form.

NOTE: This Concept is published as an aid to all those interested in or engaged in the Construction Industry. The Puget Sound Chapter, Construction Specifications Institute does not approve, disapprove, sanction or guarantee the validity or accuracy of any data, claim or opinion contained herein.

SUBSTITUTION REQUEST FORM

TO: \_\_\_\_\_

PROJECT: \_\_\_\_\_

We hereby submit for your consideration the following product instead of the specified item for the above project:

<u>Section</u>	<u>Paragraph</u>	<u>Specified Item</u>
_____	_____	_____

Proposed Substitution: \_\_\_\_\_

Attach complete technical data, including laboratory tests, if applicable.

Include complete information on changes to Drawings and/or Specifications which proposed substitution will require for its proper installation.

Submit with request all necessary samples and substantiating data to prove equal quality and performance to that which is specified. Clearly mark manufacturer's literature to indicate equality in performance.

Fill In Blanks Below:

- A. Does the substitution affect dimensions shown on Drawings? Yes \_\_\_\_\_  
No \_\_\_\_\_. If yes, clearly indicate changes. \_\_\_\_\_
- B. Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution? \_\_\_\_\_
- C. What affect does substitution have on other trades? \_\_\_\_\_
- D. What affect does substitution have on applicable code requirements? \_\_\_\_\_
- E. Differences between proposed substitution and specified item? \_\_\_\_\_
- F. Manufacturer's guarantees of the proposed and specified items are:  
\_\_\_\_\_ Same \_\_\_\_\_ Different (explain on attachment)

**CERTIFICATION OF EQUAL PERFORMANCE AND ASSUMPTION OF LIABILITY FOR EQUAL PERFORMANCE**

The undersigned states that the function, appearance and quality are equivalent or superior to the specified item.

Submitted By:

Signature \_\_\_\_\_ Title \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Date \_\_\_\_\_

Signature must be by person having authority to legally bind his firm to the above terms. Failure to provide legally binding signature will result in retraction of approval.

**For Use By Design Consultant:**

- \_\_\_ Accepted \_\_\_ Accepted As Noted
- \_\_\_ Not Accepted \_\_\_ Received Too Late
- \_\_\_ Approved as alternate - See bid form

By \_\_\_\_\_

Date \_\_\_\_\_

Remarks \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BM

PAUL A WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

MEMORANDUM

May 22, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane *Blm*  
Re: Items for the Board Meeting on May 31, 1978

All items to be included on the agenda for May 31 should be received in this office by close of business on Friday, May 26, due to Monday, May 29 being a City holiday.

Thank you for your cooperation.

BLM:jrn

cc: Doug Howell, Engineering  
John Tiemeyer/Evelyn Larson, Parks  
John Hansen, Lighting  
William Rashkov, Water  
R. L. Snyder, Building

ROUTING	DATE	INITIAL
ACTION		
FILE	<input checked="" type="checkbox"/>	
INFORMATION		
<i>Law</i>		
<i>M Staff</i>		

SEATTLE ENG DEPT  
MAY 22 11 37 AM '78

EPK

Gilman

Your  
Seattle  
Engineering Department

# NEWS RELEASE



Paul A. Wiatrak, City Engineer  
Charles Royer, Mayor

May 18, 1978

Information: Maureen Sullivan  
Community Relations: 625-2381

## PUBLIC WORKS WEEK

Mayor Royer has proclaimed the week of May 21st through May 27th as Seattle Public Works Week and calls on the citizens of the City to give recognition to the importance of public works services and facilities in their everyday lives.

Public Works Week receives national recognition and will be celebrated in Washington State with a luncheon, May 23rd at the Sheraton-Renton Inn. The luncheon will be attended by public works officials from throughout the state. A special feature at the event will be a ceremony honoring Seattle's City Engineer, Paul A. Wiatrak who this year was elected one of the top ten public works leaders of the year in the United States.

MJS:lg

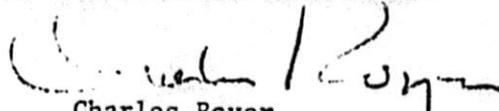
Office Of The Mayor  
City of Seattle

Charles Royer, Mayor



P R O C L A M A T I O N

- WHEREAS, Public Works Services provided in our community are an integral part of our citizens' everyday lives; and
- WHEREAS, the support of understanding and informed citizens is vital to the planning and construction of Public Works programs and systems such as sewers, streets, highways and other types of facilities; and
- WHEREAS, the health, sanitation, safety and general well-being of this community depends, to a great degree, on these services and facilities; and
- WHEREAS, the quality, efficiency and effectiveness of these facilities, as well as the planning, design, and construction of future facilities, is vitally dependent upon our Public Works engineers, administrators, and technicians; and
- WHEREAS, the City of Seattle has been honored through the selection of its chief Public Works official, Paul A. Wiatrak, City Engineer as one of the top ten Public Works leaders in the United States in 1978 by the American Public Works Association and affiliated organizations;
- NOW, THEREFORE, I, Charles Royer, Mayor of the City of Seattle, do declare this week of May 21 through May 27, 1978 as "SEATTLE PUBLIC WORKS WEEK" and call upon all Seattle citizens to give recognition to the importance of our Public Works Facilities.

  
Charles Royer  
Mayor

*Orig Copy - City Enging Dept*

May 17, 1978

BPN

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT  
M E M O R A N D U M

May 17, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *BLM*  
Re: Errors in Bid Proposals

For clarification of what the Board of Public Works needs from departments concerning requests for releases from bids due to error, I attach the Board's policy, which requires that the bidder submit to the Board of Public Works prior to five o'clock of the same business day of the bid opening the claim of error, his worksheets, and an affidavit certifying that they are the original worksheets. Upon receipt of a claim of error and worksheets, the Board of Public Works will immediately refer the matter to the department concerned, and the department concerned will meet with the contractor and evaluate the claim of error based on review of the worksheets and addressing the following questions:

1. whether, in the department's belief, the bidder acted in good faith;
2. was without gross negligence;
3. if he was reasonably prompt in giving notice of the error in bid, to the Board;
4. if the bidder will suffer substantial detriment by forfeiture;
5. if the City's status has not greatly changed and relief from forfeiture will work no substantial hardship on it.

Then the department involved will make a timely report and recommendation to the Board after meeting with the contractor. If the recommendation is to allow the bidder to be released from bid, the Board needs to know whether there is sufficient money and it is reasonable to award to the remaining low bidder.

BLN/jw  
Att.  
cc: Doug Howell, Engineering Dept.  
John Hansen, City Light  
Evelyn Larson, Park Dept.  
R. L. Snyder, Building Dept.  
Chuck Hennebry, Building Dept.  
William Rashkov, Water Dept.

ROUTING	DATE	INITIAL
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REM		DJH
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INFORMATION		
		Paw

FILE ENG DEPT  
7 44 AM '78

(Contracts for public improvements continued)

Bidding procedures continued

Bidders' Claims of Error

The Board of Public Works, in regular session March 12, 1973 adopted the following policy:

If a bidder wishes to claim error, it must be done before the end of bid opening business day at 5:00 p.m. or such claim will not be accepted or considered by the Board of Public Works. Original work sheets, and an affidavit to that effect, shall be submitted with his claim of error.

Under these conditions, if a bidder claims error, and the Board so finds, it will preclude him from rebidding the project in the event the City has no responsive bids remaining within the money available and has to re-advertise for further proposals.

The Board will assess damages against the contractor, which will be considered on a case by case basis.

Plan Holders, Information on

The Board of Public Works in regular session March 14, 1973 adopted the following policy:

As a general rule, information on plan holders will be available, but in the event that a Department feels that it would be detrimental to the bidding process, it may be withheld.

PAUL A. WIATRAC, CITY ENGINEER  
BPW

Re: Executive Policy TT-100  
MBE's

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP

5/16/78  
(date)

All BPW Members  
(referred to)

Blm  
(referred by)

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: (my understanding was that we would continue with BPW Policy for MBE's until Ord. is passed and that we would continue to report information on MBE participation to HCB. These hid conditions appear

Orig + atts:  
Human Rights Dept

\*Action requested no later than ASAP (date)  
to go beyond that into area of concern in my opinion)  
MBE Definition is not consistent w/ State on 70 or women

ROUTING	DATE	INITIAL
ACTION		
AEM/DJH		
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Paw		

MAY 17 10 37 AM '78

SEATTLE ENCL DEPT

Your  
Seattle  
Human Rights Department

Vivian L. Caver, Director  
Charles Royer, Mayor

May 16, 1978



RECEIVED  
MAY 16 12 00 PM '78  
BOARD OF PUBLIC WORKS

MEMORANDUM

TO: Ms. Betty L. McFarlane, Executive Secretary  
Board of Public Works

FROM: *VLC* Vivian L. Caver, Director  
Seattle Human Rights Department

SUBJ: Bid Conditions for complying with Policy No. 77-100

Please find submitted herewith, Bid Conditions (Instructions, Requirements and Procedures for compliance with the Minority Business Enterprise Program - Policy Number 77-100), for your review and comment.

It is my understanding, as per our meeting on 4/25/78, with Mr. D. Kelley, that we are to proceed with the implementation of the MBE Policy, until such time an ordinance is passed.

Be advised that A Sworn Statement for compliance with the Provisions of the MBE Policy will be forthcoming.

Please feel free to Contact Willie Winston, extension 4381, if you have any questions or need further assistance.

VLC/gb

BPW

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

MAY 12 11 27 AM '78

M E M O R A N D U M

May 11, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *BLM*  
Re: "Rules and Regulations" Book -  
Additional Pages -  
AMENDMENTS TO PREVAILING WAGE PROVISIONS  
OF PUBLIC WORKS CONTRACTS

As we indicated in a previous memo to you, the Board of Public Works, in regular session April 12, 1978, approved amendments to prevailing wage provisions of public works contracts.

Attached are:

- 59(b)
- 59(c)
- 59(d)
- 59(e)
- 59(f).

The above attached pages should be included in all Board of Public Works' "Rules and Regulations" books retained by all Board Departments, and will be placed on file with the Board of Public Works' procedures in the City Comptroller's Office.

BLM/jw

Atts.

cc: City Comptroller - C.F. No. 276261  
Kevin Whinihan, c/o City Light  
Cheryl Phillips, City Light  
Municipal Reference Library (2)  
Robert Lowe, Legislative Audit Staff

4c  
+  
att

ROUTING	DATE	INITIAL
ACTION		
FILE		✓
INFORMATION		
		<i>Paul</i>
		<i>HEMITH</i>
		<i>DR</i>

AMENDMENTS TO PREVAILING WAGE PROVISIONS  
OF PUBLIC WORKS CONTRACTS

The Board of Public Works, in regular session April 12, 1978, approved the attached amendments to Prevailing Wage Provisions of public works contracts. Effective immediately, all Board departments shall incorporate into all future contract specifications, Exhibits B and C (which are changes in wording of the contract portion of the special provisions and in the preface to the list of prevailing wages set forth therein.)

The Board of Public Works Department will send Exhibit A (the revision to Sec. 7-1.07 of the Standard Plans and Specifications) to all contractors awarded a project contract, so they will be aware of their responsibility in this regard. Specifications may also include reference to 7.07, as amended, of the Standard Plans and Specifications.

Attachments: EXHIBITS B, C, A

EXHIBIT "B"

That subject to applicable local, state and/or federal laws, the said party of the second part hereby covenants, stipulates and agrees:

That the hourly wages paid to laborers, workmen, or mechanics upon all public works of this State and upon work contemplated in this contract, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the State where such labor and work herein contemplated is to be performed, as of the date of this contract.

That this contract is subject to Chap. 39.12 RCW and amendments and additions thereto relating to minimum wages. On federally funded projects, federal wage laws and regulations prevail. When there is a difference between the applicable state and federal prevailing rate of wage for a similar classification of labor, the wage which is the higher of the two shall be paid.

That it is the sole responsibility of the party of the second part to assign the appropriate classifications to all laborers, workmen or mechanics who will perform any work under this public works contract, and to ascertain and pay the applicable prevailing wage rates and fringe benefits for each such classification.

EXHIBIT "C"

The contract is subject to Chap. 39.12 RCW and amendments and additions thereto relating to minimum wages. On federally funded projects, federal wage laws and regulations prevail. When there is a difference between the applicable state and federal prevailing rate of wage for a similar classification of labor, the Contractor shall pay not less than the wage which is the higher of the two.

All laborers, workmen or mechanics shall be paid not less than the minimum hourly rate of wage hereinafter specified, Provided, however, That nothing herein contained shall be construed to prohibit the Contractor, subcontractor or other person doing or contracting to do the whole or any part of the work under this contract, from paying any such laborers, workmen or mechanics wages in excess of the hourly minimum rate above specified, Provided further, that any listing of wages and fringe benefits set forth herein for any classification is intended only as a guideline for the Contractor and does not necessarily reflect the most recent classifications or prevailing wage rates therefor.

It is the sole, responsibility of the Contractor to assign the appropriate classifications to all laborers, workmen or mechanics who will perform any work pursuant to any public works contract, and to ascertain the applicable prevailing wage rates and fringe benefits for each such classification.

Current prevailing wage data can be obtained by the Contractor from the Industrial Statistician of the Department of Labor and Industries, Industrial Relations Division, General Administration Building, Olympia, Washington 98404, (206) 753-4019, and for federally funded projects, from the U. S. Department of Labor, Wage Hour Division, Federal Office Building, Seattle, 442-1492.

EXHIBIT "A"

CITY OF SEATTLE AMENDMENT TO APWA

STANDARD SPECIFICATIONS FOR MUNICIPAL PUBLIC WORKS CONSTRUCTION  
7.07 LEGAL WAGES ON PUBLIC WORKS

The hourly wages paid to laborers, workmen, or mechanics upon all public works of this State and upon work contemplated in this contract, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the State where such labor and work herein contemplated is to be performed, as of the date of this contract.

The contract is subject to Chap. 39.12 RCW and amendments and additions thereto relating to minimum wages. On federally funded projects, federal wage laws and regulations prevail. When there is a difference between the applicable state and federal prevailing rate of wage for a similar classification of labor, the Contractor shall pay not less than the wage which is the higher of the two.

All laborers, workmen or mechanics shall be paid not less than the minimum hourly rate of wage hereinafter specified, Provided, however, That nothing herein contained shall be construed to prohibit the Contractor, subcontractor or other person doing or contracting to do the whole or any part of the work under this contract, from paying any such laborers, workmen or mechanics wages in excess of the hourly minimum rate above specified, Provided further, that any listing of wages and fringe benefits set forth herein for any classification is intended only as a guideline for the Contractor and does not necessarily reflect the most recent classifications or prevailing wage rates therefor.

It is the sole responsibility of the Contractor to assign the appropriate classifications to all laborers, workmen or mechanics who will perform any work pursuant to any public works contract, and to ascertain the applicable prevailing wage rates and fringe benefits for each such classification.

Current prevailing wage data can be obtained by the Contractor from the Industrial Statistician of the Department of Labor and Industries, Industrial Relations Division, General Administration Building, Olympia, Washington 98404, (206) 753-4019, and for federally funded projects from the U. S. Department of Labor, Wage Hour Division, Federal Office Building, Seattle, 442-1492.

The hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workmen or mechanics in each trade or occupation required in the performance of this contract, either by the Contractor, subcontractor or person doing or contracting to do the whole or any part of the work contemplated by this contract, is shown in the special provisions.

The Owner does not guarantee that labor can be procured for the minimum wages set forth. The rates of wages listed are minimum only, below which the Contractor cannot pay and they do not constitute a representation that labor can be procured for the minimum listed. It will be the responsibility of the Contractor to ascertain for himself the wages above the minimum set forth he may have to pay.

Before payment is made by or on behalf of the Owner of any sum or sums due on account of a contract for a public works improvement

under these specifications, a certified statement of hourly wage paid shall be filed with the Owner's fiscal officer and with the Director of the Department of Labor and Industries by the Contractor and each subcontractor, and, further provided, that before any payment is made by or on behalf of the Owner, the Director of the Department of Labor and Industries shall issue a statement certifying that the prevailing wage requirements of this section have been satisfied.

The certified statement of hourly wage paid shall be in the following form:

State of Washington,) )  
County of \_\_\_\_\_ ) ss.

I, the undersigned, having been duly sworn, depose, say and certify that in connection with the performance of the work, payment for which this voucher is submitted, I have paid the following rate per hour for each classification of laborers, workmen, or mechanics, as indicated upon the attached list, now referred to and by such reference incorporated in and made an integral part hereof, for all such employed in the performance of such work; and no laborer, workman or mechanic so employed upon such work has been paid less than the prevailing rate of wage or less than the minimum rate of wages as specified in the principal contract; that I have read the above and foregoing statement and certificate, known the contents thereof and the substance as set forth therein is true to my knowledge and belief.

Attention is called to RCW 39.12.050, which reads as follows:

"Any Contractor of subcontractor who shall upon his oath, verify any statement required to be filed under this act which is known by him to be false, or is made without knowledge in reckless disregard of the truth, shall be guilty of perjury in second degree and shall be punished as provided in RCW 9.72.03."

In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature to that contemplated under the contract and such dispute cannot be adjusted by the parties involved, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State of Washington, and his decision therein shall be final, conclusive, and binding on all parties involved in the dispute.

BPW

PAUL A. WIATRAK, CITY ENGINEER

SEATTLE ENG DEPT

MAY 12 11 25 AM '78

*Draft  
Proposed  
Re: Special Bid  
Conditions -  
Federal funded  
req.*

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP

✓ 5/11/78

(date)

*All BPW members*

(referred to)

*Blum*

(referred by)

\_\_\_\_ Please prepare reply for the Executive Secretary's signature on office stationery.

\_\_\_\_ Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

\_\_\_\_ Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

\_\_\_\_ Other: *We will advise when*

*attached is approved by  
Office of Federal Contract  
Compliance. We should not  
use the new proposed  
bid conditions until approval.  
Any comments on the draft  
are welcome.*

\*Action requested no later than

(date)

*ASAP*

*Orig: Federal Aid  
tatts*

ROUTING	DATE	INITIAL
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INFORMATION		
PAW		
REHNDJH		
DR		

BPTK

PAUL A. WIATRAC, CITY ENGINEER

ROUTING	DATE	INITIAL
ACTION		
FILE	✓	
INFORMATION		
(Paw)		
REMIDJH		

THE CITY OF SEATTLE  
 BOARD OF PUBLIC WORKS  
 DEPARTMENT

M E M O R A N D U M

✓ May 10, 1978

SEATTLE ENG DEPT  
MAY 12 7 52 AM '78

To: All Board of Public Works Members  
 From: Betty L. McFarlane, Executive Secretary *Blm*  
 Re: "Rules and Regulations" Book -  
 BOARD OF PUBLIC WORKS POLICY FOR -  
 UTILIZATION OF MINORITY BUSINESS ENTERPRISES

In regular session today, I requested that the Board of Public Works approve a revision to their 1974 policy for Utilization of Minority Business Enterprises on public works contracts. The Board concurred, and the revised policy is to be incorporated into all new specifications from this date forward until further notice. This change is in compliance with State Law, RCW 35.22.650, which requires cities of the first-class to include "women" in the definition of Minority Business Enterprises, and statement listed under item No. 3 in all bid specifications. Item No. 7 was expanded to include the Mayor's Executive Policy No. and State Law RCW No.

Attached are revised pages:

53(d) (Two pages).

The attached should be included in all Board of Public Works' "Rules and Regulations" books retained by all Board Departments, and will be placed on file with the Board of Public Works' procedures in the City Comptroller's Office.

BLM/jw  
Atts.

- cc: Mayor Charles Royer
- Bob Royer, Dick Kelley - Mayor's Office
- City Comptroller - C.F. No. 276261
- Robert Lowe, Legislative Audit Staff
- Kevin Whinihan, c/o City Light
- Cheryl Phillips, City Light
- Steve Williams, O.M.B.
- Municipal Reference Library (2)
- Vivian Caver, Dir., Human Rights Dept.
- Roberta Standifer, Human Rights Dept.
- Willie Winston, Human Rights Dept.
- Susan Lane, Dir., O.W.R.

- Doug Howell, Engrg. Dept.
- William Rashkov, Water Dept.
- John Hansen, City Light
- Bob Snyder, Buildings Dept.
- Chuck Hennebry, Bldgs. Dept.
- Evelyn Larson, Parks Dept.

BOARD OF PUBLIC WORKS POLICY OR - UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(Adopted in regular session, November 13, 1974  
and amended May 10, 1978)

It is the policy of the City of Seattle that the maximum practicable opportunity to participate in the performance of City contracts be provided to minority business enterprises as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors on City contracts.

- A. The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least fifty-one (51) percent of which is owned by minority group members or, in case of publicly owned businesses, at least fifty-one (51) percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Blacks, Asians, American Indians, Women, Spanish-speaking Americans, American Eskimos and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM

The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the Policy entitled "Utilization of Minority Business Enterprises") to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall:

1. Designate a liaison officer who will administer the Contractor's minority business enterprises program.
2. Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make or buy" decisions.
3. Consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The Contractor shall be required to submit evidence of compliance with this section as part of the bid.
4. Assure that minority business enterprises will have an equitable opportunity to compete for subcontracts, in excess of \$2,500.00, and will notify minority firms and minority construction agencies as designated by the Board of Public Works by mail with return receipt requested.

Notification shall include all necessary information normally supplied to potential sub-bidders to properly bid the particular job. It shall be the responsibility of those minority firms interested in bidding to do so in a timely and proper manner.

5. Maintain records showing (a) procedures which have been adopted to comply with the policies set forth in this program, including the establishment of a source list of minority business enterprises, (b) awards to minority business enterprises on the source list, and (c) specific efforts to identify and award contracts to minority business enterprises.
6. Insert in any subcontract hereunder which may exceed \$10,000.00 provisions which shall conform substantially to the language of this program, including this paragraph, and to notify the Human Rights Department of the names of such Contractors.
7. Cooperate with the Human Rights Department in any studies and surveys of Contractor's Minority Business Enterprises Procedures and Practices that the Human Rights Department may from time to time conduct in accordance with City Ordinance #101432, Executive Standard Operating Policy #77-100 effective 12-20-77, and State Law RCW 35.22.650.
8. Submit periodic reports to the Human Rights Department of subcontracting with minority business enterprises with respect to the record referred to in Subparagraph (4).
9. The general contractor shall accept estimates from subcontractors up to one hour prior to project bid time.
10. Performing the steps outlined in this policy shall constitute compliance with this specification.

The above policy shall be placed in all specifications for public works projects.

BPA

ROL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

SEATTLE ENG DEPT  
MAY 11 8 44 AM '78

M E M O R A N D U M

✓ May 10, 1978

To: Vivian Caver, Director  
Human Rights Department

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: New Federal Bid Conditions - Federal Registry, April 7,  
Part IV, Department of Labor

This Department has a copy of the April 1978 Federal Registry which sets forth new Federal Bid Conditions and 'Goals and Timetables for Female and Minority Participation on Construction Projects', effective May 8, 1978.

It is our understanding after discussing the matter with your office that you will be drafting procedures and bid conditions to comply with this order and will review same with Mr. Jim Warren, Director, Regional Federal Contract Compliance Program, for his approval as to form.

Until such approval is obtained, our departments will not process any project specifications, which are federally funded. Please notify us as soon as the new approved regulation is available to be incorporated into our contract specifications.

BLM:wb

cc: All Board Members  
All Project Engineers

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ETHEL MC		
ASH/DJH		

ORIG COPY: Federal Aid  
COPIES: Bd of Public Works  
Human Rights Dept

B.P.W.

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

May 10, 1978

To: Vivian Caver, Director  
Human Rights Department

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Draft Request for Legislation - Women and Minority  
Business Enterprises Utilization

I have reviewed the draft submitted by your Department on the above subject and concur in your preference for the third option: development of a detailed implementing Ordinance to carry out the policy direction of the Mayor. An Ordinance will give the City legal authority and firm ground to require Minority Business Enterprises participation on all contracts, and result in a successful program.

Appropriate bid and contract requirements should be included in the Ordinance so that set-asides will be possible, if necessary, to meet established goals.

I would appreciate your allowing the Board of Public Works to review this draft Ordinance when it is prepared, and provide input prior to finalizing.

Thank you.

BLN/jw

cc: Bob Royer, Mayor's Office  
Dick Kelley, Mayor's Office  
Board of Public Works Members

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*Orig: Federal Aid*

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		DR

BPW

5/8

Betty L. McFarlane, Exec. Secy., Board of Public Works

Paul A. Wiatrak, P.E.,  
City Engineer

P. A. Wiatrak

May 8, ✓

78

Draft Report on City Contracting (Lowe 5/2/78)

Attached is a memo which incorporates the Department's response to the Draft Report on City Contracting.

PAW:lht  
Attch.

MEMORANDUM

To A. E. MARONEK  
 By D. J. HOWELL Date May 4, 1978  
 Subject Draft Report on City Contracting (Lowe 5/2/78)

The following are my comments:

Page 1 - paragraph two

"Examples include public buildings; public places and grounds;  
streets, sidewalks, bridges, public wharves, docks, viaducts;  
traffic signals and other traffic management facilities;  
sewer and storm drain facilities; waste storage, processing,  
 etc.

- paragraph three

The first sentence is not entirely true.

Any public work must be accomplished by contract pursuant to public notice and by competitive bid whenever the estimated cost exceeds \$10,000 except:

- (1) watermain construction where the limit is \$15,000
- (2) electrical distribution or generating systems on public right of way or municipally owned property
- (3) solid waste departments

- paragraph four

The last part of the paragraph should read:

"...., and other in-house or purchased items or services.

Page 4 - paragraph (C)

C. The originating department submits the plans and specifications to the BPW for approval. The BPW delegates the review to the various Board departments and Human Rights Department for their recommendation of approve/disapprove.

A. E. MARONEK

D. J. HOWELL

May 4, 1978

Draft Report on City Contracting (Lowe 5/2/78)

page 2

Page 6 - paragraph four

The Engineering Department has conducted evaluations on all projects completed since approximately August of 1977. Prior to that date only a few selected projects were reviewed.

The present evaluation consists of a preliminary review of each contract to determine if a formal critique (Post Construction meeting) should be held. Should this review indicate a probable benefit would result, a formal critique is held. If not, a written recommendation is circulated to the Construction, Design, Operations and Office Administrations Divisions recommending that a critique is not necessary.

During the time period from August 1, 1977 to the end of 1977 twenty seven contracts were completed, of which six Post Construction meetings were held. From January 1, 1978 through April 30, 1978, twenty seven additional contracts were completed, of which ten contracts were selected for Post Construction meetings. These were selected on the basis that due to the nature of the project (e.g. problems related to Design, Inspection, Funding, Public Relations, etc.) a benefit could be derived to improve future contracts.

Post Construction meetings held on these selected contracts have resulted in recommendations that have already been utilized in Project Management, Design, Estimating and Specifications preparation. Further benefits will be derived when reports summarizing notes taken and conclusions and recommendations made from all these contracts are distributed to personnel that can use this information.

Post Construction Critiques do not appear<sup>to be</sup> conducted in other departments.

Page 6 - paragraph 5

BPW procedures and policies should state in no uncertain terms just what risks the City is willing to assume to achieve lower costs and what risks the contractor will assume. This should be defined with the aid of the City attorney's office.

A. E. MARONEK

D. J. HOWELL

May 4, 1978

Draft Report on City Contracting (Lowe 5/2/78)

page 3

Page 7 - Positive Factors - Item # 1

Construction quality is controlled by a number of factors not only specifications. It is a combination of good design, clear and concise contract documents, adequate material testing, quality inspection, and a responsible contractor.

Page 8 - Professionalism

a) This should include construction inspection.

DJH:kk

BPW

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

May 4, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *blm*  
Re: Board of Public Works' requests for recommendation

When the Board of Public Works requests a report and recommendation from its members, we would appreciate your submitting the material and recommendation back to the Board with no carbon copies to others. Then the Board can make a composite report to agencies, public, etc. rather than having individual reports going out separately from departments which may reflect a position other than that of the Board.

Thank you for your attention to this matter.

BLM/jw

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		<i>blm</i>
		<i>H. Staff</i>

BPW

PAUL A. WIATRAC, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

✓ May 3, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *BLM*  
Re: Amendments to Prevailing Wage Provisions of  
Public Works Contracts

The Board of Public Works, in regular session April 12, 1978, approved the attached amendments to Prevailing Wage Provisions of Public Works Contracts. Effective immediately, incorporate into all future contract specifications, Exhibits B and C, which are changes in wording of the contract portion of the special provisions and in the preface to the list of prevailing wages set forth therein.

This Department will send Exhibit A, the revision to Sec. 7-1.07 of the Standard Plans and Specifications, to all contractors awarded a project contract, so they will be aware of their responsibility in this regard. Specifications should include reference to 7.07, as amended, of the Standard Plans and Specifications.

BLM/dpw

Att.

cc: Doug Howell, Engineering Department  
Evelyn Larson, Parks Department  
Bill Rashkov, Water Department  
John Hansen, Lighting Department  
Bob Snyder, Building Department  
City Comptroller File No. 276261  
Industrial Statistician,  
Dept. of Labor and Industries  
Industrial Relations Division,  
Dept. of Labor and Industries

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BPW

PAUL A. WIATRAK, CITY ENGINEER

*1st Phase  
Re: Draft from  
City Council  
Audit Staff on  
BPW Procedures  
Public Imp.*

Board of Public Works  
Office of the Executive Secretary  
Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP

*5/3/78*  
(date)

*All BPW Members*  
(referred to)

*Blm*  
(referred by)

\_\_\_\_ Please prepare reply for the Executive Secretary's signature on office stationery.

\_\_\_\_ Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

\_\_\_\_ Forwarded for your information and files.

Other: *The changes on the draft are my comments. I have not, however, gone beyond page 4 yet. Would like your individual responses before I send this back.*

\*Action requested no later than

*Ple Rush*  
(date)

SEATTLE ENG DEPT  
MAY 4 7 45 AM '78

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Seattle City Council  
Memorandum

Date: 5/2

To: Betty MacFarlane

From: Bob Lowe

Subject: See attached note

Distribution: Mr. Lortman  
Mr. Wiatrak  
Ms. McFarlane

Mr. Marone  
Mr. Howell

5/2/78

Attached is a draft of a section of the report on the first phase (the survey) of our look at contracting in the city. This fits into the report as in the following outline:

I Introduction

II Findings (by type of item)

A. Public improvements

B. Goods + equipment

C. Services

1. Expert + consulting

2. Technical

3. Personal

etc.

D. Other (concessions, leases, etc.)

III. Work Plan (for detailed study of selected issues or areas in contracting)

This report will be used only for background info and planning purposes. As you can see we are still in the early draft stages of the first (preliminary) phase.

I would appreciate having your comments on the accuracy and completeness of the attached. Could you please reply informally in a day or two?

← Attached

7  
Lowe  
5/2/78  
Draft

Public Improvements (construction, etc.)

Public improvements are defined as all work, construction, alteration, rehabilitation, repair, or improvement (including both labor and materials), other than ordinary maintenance (as defined in Board of Public Works policy adopted 2/6/74), on any City-owned or City-controlled property.

Examples include public buildings; parks; streets, sidewalks, bridges, traffic signals and other traffic management facilities; sewers; solid waste storage, processing, and disposal facilities; water storage, treatment, and distribution facilities; and electric generating and distribution facilities and street lighting.

All public improvements of \$10,000 or more must, by State law, be performed by private contractors selected under competitive procurement procedures (in Seattle, this means lowest bid). Public improvements under \$10,000 may be performed either by private contractors or City employees.

In accounting for project costs, the cost of the public improvement performed by contract is only one part of the total, which includes conceptual planning, design, development of specifications and estimates, project management, inspection, contract administration, and other in-house and <sup>purchased</sup> ~~contracted-for~~ items.

Current Status of Organization and Administration

The Board of Public Works (BPW) was created by Charter to "manage and supervise public works, building, structures, streets, utilities and equipment...." (A Charter Amendment incorporating Resolution 25625 was approved in 1977. It substantially reduces the requirements imposed by Charter and increases the requirements to be addressed by ordinance.) The BPW also has other responsibilities such as street use, cable communications, and other utility activities.

The BPW is composed of the heads of five departments: Engineering, Building, Lighting, Water, and Parks and Recreation. Other departments (such as the Department of Community Development and Seattle Center) have specific responsibilities for public improvements and work through departments of the BPW or through the BPW directly.

The BPW, as prescribed by Charter, maintains a secretary (known as the Executive Secretary) who, with her staff, comprises the Board of Public Works Department (BPWD).

The BPW delegates most of the technical and administrative authorities to its member departments. Some administrative authorities are delegated to BPWD. Some technical responsibilities (e.g., review of plans and specs) are retained by BPW and then delegated by BPW members to staff in their departments.

The Charter assigns certain responsibilities to the five BPW departments. In some cases these assignments overlap or are unclear. Throughout

the years, the departments have resolved these overlaps or ambiguities by compromise among themselves.

In simplified terms, the responsibilities for each department include:

1. Engineering: design and construction for itself, Water Department and Department of Community Development.
2. Water: project planning and system operation
3. Lighting: design and construction for itself
4. Parks: design and construction (usually through consultants), except lately Parks uses the Seattle Engineering Department for some inspection, mostly of sub-surface utilities.
5. Buildings: design, construction, and demolition work on their own, plus administration of facilities design and construction for Seattle Center.

The following procedures are used to procure public improvements:

- a. The construction budget is approved by City Council in:
  1. The ordinance approving CIP and appropriating first 4-6 months of CIP, and
  2. Subsequent legislation
- b. Plans and specifications are prepared by the various originating departments (or their consultants)

- c. The originating department <sup>CIRCULATES</sup> submits the plans and specifications to the BPW <sup>DEPARTMENTS</sup> for approval; ~~The BPW submits the plans and specs to various departments,~~ including the BPWD <sup>ADD HRD</sup> for review and comment. *THE BPWD SUBMITS THE PLANS AND SPECIFICATIONS TO THE BPW FOR APPROVAL.*
- d. *AFTER APPROVAL OF SAME,* The originating department incorporates comments and sends letter to this effect to each commenting department with a copy to the BPWD.
- e. The BPWD calls for bids.
- f. Bids are received, opened and read in public by the BPW; bid packages are checked for bid bond, signature on proposal, and notarized signature on Affirmative Action Statement.
- g. Bids are referred to the originating department for "tabulation" (check for completeness and accuracy of contractor's proposal); the Seattle Engineering Department uses a tabulation form.
- h. The originating department reports back to the BPW and recommends the lowest responsive bidder.
- i. The BPW awards the contract; the contract is sent to the low bidder for signature; the contractor signs and returns it with a performance bond and an insurance binder.
- j. The BPW Chairman and Executive Secretary sign the contract; a copy is filed with the City Clerk, <sup>ORIGINATING</sup> ~~THE~~ DEPARTMENT AND THE BPWD.

- k. The originating department supervises the contractor's performance of the contract (under authority delegated by BPW).
- l. The BPW must approve change orders (however, all changes less than 25% of the contract cost are reviewed by BPWD and are not reviewed by the BPW). BPW rarely, if ever, rejects change orders recommended by the departments.
- m. When work is complete, the originating department inspects and recommends to the BPW that:
  1. Contract is complete, or
  2. Contractor has claims pending against the City, or
  3. If necessary, the contract be extended.
- n. The contractor has the right to appeal claims to the BPW; however, most disputes result in litigation.

Possible Problems Indicated

The following possible problems are indicated:

1. "Lowest and best" must be defined in order to minimize confusion and conflict.
2. Management information regarding public improvements is lacking.
  - a. Encumbrances should be recorded and reported in comparison to budgeted amounts.

BOARD OF PUBLIC WORKS

1978

#4

- b. The BPW's annual report does not present information in a manner that is useful for management.
3. Written policies and procedures exist but are incomplete in that BPW's policies and procedures are a compilation of separately written pieces that do not present a comprehensive, easily understandable, statement of policies and procedures. The member departments appear relatively comfortable in their roles and relationship, which are a product more of evolution than of any comprehensive, systematic effort to make the BPW's major roles (management of public improvements, and interdepartmental communication and cooperation) appropriate, effective, and efficient. One reason for this is that there is little City legislation governing Board procedures, and there is a great deal of flexibility within the limits and requirements of State law.
4. The Seattle Engineering Department has conducted post construction evaluations on only seven contracts (out of about 60) completed in the past year. Minutes have not been transcribed, indicating that the information obtained is not being used. Post-completion evaluations do not appear to be conducted in other departments.
5. Procedures are not suited to procurement of advanced technologies where risks can be reduced (assigned to the contractor) through negotiation. This is especially important in areas where there is no risk assignment model that can be selected in advance and incorporated into the plans and specifications.

6. Small, straightforward projects could be completed for less money if formal bid procedures were modified and if simpler specifications and a simpler contract were used.

#### Positive Factors Indicated

The following positive factors are indicated:

1. Competition is the rule, encouraging bidders to propose the lowest possible cost (although project quality is only as good as the specifications).
2. Bids are called for, received, opened and read in public, resulting in an open system that discourages misuse of the system.
3. Contractors are selected impartially on the basis of a readily determinable measure, namely, lowest cost.
4. The Engineering Department has written policies and procedures for management of construction projects.
5. The Engineering Department appears to be dedicated to quality construction at the lowest possible cost, and members of the Department appear to have great pride in their work.

#### Unanswered Questions

The following issues are considered important, but more information is needed to determine if a problem exists (and, if so, what the consequences are):

1. What are the City's policies regarding preference to:
  - a. Local (resident) contractors?
  - b. Minority business enterprises?
2. Are affirmative action goals (that are expected of contractors) realistic and being met?
3. Professionalism
  - a. Are specifications prepared by personnel with proper qualifications?
  - b. Is the BPWD's review of plans, specs, contract, bid conditions, etc.:
    1. Necessary?
    2. Sufficient?
4. Are the BPW policies and procedures adequate to assure fulfillment of legislative intent?
5. Are BPW policies and procedures followed by all departments for all public improvement projects?

BP 77

PHIL BUSWELL, ENGR.

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT  
MEMORANDUM

ROUTING	DATE	INITIAL
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ZMW/HSEL		

March 28, 1978

MAR 29 10 12 AM '78  
SEATTLE ENG. DEPT

To: Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *Blm*  
Re: City's Policy for Utilization of Minority Business Enterprises

The Human Rights Department held a meeting to discuss procedures for implementing the above policy. They have set a minimum awarding authority goal for 1978 of 15% MBE participation on the total dollar volume of all contracts let. This policy is to be effective immediately.

The Office of Women's Rights will, after conducting a study, develop a separate goal for Women's-Owned Businesses.

The Human Rights Department will provide to all departments a loose leaf notebook, to be used as a desk reference for compliance with the policy, to be easily updated. A listing of bonafide MBE's through the Seattle area and Pacific Northwest vicinity and identifying areas of expertise and capability will be supplied.

It will be the responsibility of the Board of Public Works as awarding authority on public works construction contracts and consultant contracts to report to the Human Rights Department on a monthly basis relative to MBE participation on contracts let.

Willie Winston is MBE Officer and will work with us in preparation of the contract specifications for MBE participation on public works contracts.

Consultant Contracts - The Human Rights Department will set forth a prequalification process with departments.

Public Works Contracts - Compliance with the City's MBE policy will be the responsibility of the Board of Public Works to assure that the 15% participation goal is achieved on the total dollar amount of contracts awarded for the year. A set-aside procedure may have to be implemented during the year, if percentages are not coming through. The 15% goal appears to be feasible and realistic. The City achieved 25% MBE participation on EDA projects with the set-aside method.

This office, with the Human Rights Department will revise contract documents and forms to conform with the policy. Your comment to these revisions will be requested.

BLM:jk

cc: All Concerned

*Copy - Human Rights Dept*

BPN

425

✓ April 24, 1978

Re: PROCEDURES FOR EVALUATING "OR EQUAL"

Honorable Board of Public Works  
Seattle, Washington

Gentlemen:

In response to your April 3, 1978 memo the Engineering Department recommends the following be considered:

1. The Engineer or architect be responsible for determining the material or products to be utilized in his design.
2. That standard reference specifications such as ASTM, AASHO, etc. be utilized whenever possible.
3. When it is necessary to specify a product or material by brand name and/or proprietary make that at least three alternates be designated, any one of which will be acceptable.
4. When substitutions are to be permitted that submittals be evaluated prior to bid opening. If necessary the advertising period should be extended and include a cutoff date afterwhich further submittals would be rejected.
5. Any submittals for material or product approval other than those specified be made available to all bidders prior to bid opening.
6. A standardization or product approval committee be established city wide or by department to evaluate products and material and that such approved material or products lists be made available to all bidders.

Ideally specifications should be written to achieve these results:

- (1) list of choice of materials controlled by the engineer or architect
- (2) competition

ORIG COPY: Standard Plans and Specs  
COPIES: Bd of Public Works  
Human Rights Dept

April 24, 1978

Re: PROCEDURES FOR EVALUATING "OR EQUAL"

- (3) fairness in attracting other products of which the designer may not have been aware of during the design phase
- (4) elimination of the risk to bidders in proposing products other than those specified
- (5) closer bidding with less gamble to the contractor
- (6) a reduction in bid peddling
- (7) flexibility
- (8) and evaluation of equality at the proper time and by the proper authority

The adoption of the listed procedures would accomplish these results.

With respect to the criteria listed in the Executive Secretary's memo to the Board dated March 28, 1978 we have the following comments.

- Item #1 - Other criteria which should be considered are longevity, maintenance and operating costs, safety, efficiency, general adaptability or compatability with existing equipment and conditions.
- Item #3 - Workmanship as aesthetics is highly subjective and dependent on one's perspective.
- Item #4 - We do not believe it is in the best interest of the City to dictate what specific material must be purchased from a minority or women's business enterprise.

We hope these comments will be of some help.

Very truly yours,  
sgd. Philip M. Buswell  
*for* PAUL A. WIATRAK, P.E.  
City Engineer

DJH:kk

cc: AEM  
HWP

BPM

PAUL A. WIATRAC, CITY ENGINEER

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THE CITY OF SEATTLE  
 BOARD OF PUBLIC WORKS  
 DEPARTMENT

M E M O R A N D U M

✓ March 24, 1978  
 SEATTLE ENG DEPT  
 MAR 27 12 02 PM '78

To: Director, Office of Management and Budget -  
 Attn.: Steve Williams, Analyst

From: Betty L. McFarlane, Executive Secretary *Blm*

Re: Draft Ordinance Board of Public Works

The Board of Public Works provides much more in administration of public works than just opening of bids and awarding of contracts. The Board manages public street areas and acts as a coordinating agency on permit requests for civic events such as Seafair, Fat Tuesday, University District Street Fair et al, neighborhood block parties and permits for sidewalk cafes, food carts, flower carts, etc., to assure that all concerned are contacted and input received prior to action. We coordinate such requests for use of street area with Utilities, Traffic Engineer, Department of Licenses and Consumer Affairs, Fire, Police, Health, Metro, Parks, abutting owners, and in some cases, special District Boards and others.

The Board of Public Works, under the present Charter, is responsible for management of public works, buildings, wharves, docks, bridges, viaducts, streets, sewers, public places and grounds, etc. If the Board did not handle the many permit requests, complaints and appeals connected with these, the Mayor and the City Council would be deluged with administrative matters and would not be able to devote time to the policy and legislative decisions of the City. The Board sets forth rules and regulations to guide concerned departments in issuing delegated permits. Variances and appeals are considered by the Board on a merit basis. The items that are not delegated to others are those permits which require coordination; and in this regard, the Board provides the public with a one-stop service. We believe that it is important to continue this public service in the interest of all concerned. Much red tape and bureaucratic handling is eliminated by having one agency responsible for coordinating and administering the use of public area.

The Board settles differences between public works departments of overlapping jurisdiction and acts as an appeals Board for citizens from the actions of its departments. Departments would be in an autocratic position without appeal procedure if the Board were not authorized to manage and direct its departments in this regard.

It would be unfair to expect citizens to deal separately with each department involved; and such action would result in a duplication of effort, complaints, loss of time and inadequate response to the public on the part of the City.

PAUL A. WIATRAK, CITY ENGINEER

Director, O.M.B.  
Attn.: Steve Williams  
March 24, 1978  
Page 2

Since we feel it is the present administration's policy to provide the best overall service to the public, we sincerely hope that the Board can continue to manage public streets under the present Ordinances and regulations authorizing same, to provide this needed service. Thank you for this consideration.

BLM/jw

cc: Mayor Charles Royer  
Bob Royer  
Board of Public Works Members

BPW

PAUL A. WIATRAK, CITY ENGINEER

*City Council  
Developing a  
Re: BPW Ord. for  
Charter Amend.*

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP

*2/27/78*  
(date)

*All BPW Members*  
(referred to)

*Blin*  
(referred by)

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: *I think we should discuss this request with the Mayor on Thursday. OMB has already been assigned to draft Ord. for Mayor and is in process.*

\*Action requested no later than \_\_\_\_\_ (date)

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FEB 28 10 08 AM '78

**Seattle City Council**

RECEIVED  
FEB 27 1978  
BOARD OF PUBLIC WORKS



Sam Smith  
President of the Council  
625-2455

February 24, 1978

George E. Benson  
Chairman  
Transportation  
Committee  
625-2441

Betty McFarlane  
Executive Secretary  
Board of Public Works  
City of Seattle

Tim Hill  
Chairman  
Finance Committee  
625-2436

Dear Ms. McFarlane:

Paul Kraabel  
Chairman  
Planning & Urban  
Development Committee  
625-2447

In the City Council's 1978 work program, the Council authorized a study of contracting activities in the City. The study will be used by the Council, in part, to develop appropriate legislation governing contracting stemming from the Board of Public Works Charter Amendment.

Phyllis Lamphere  
Chairman  
Intergovernmental  
Relations Committee  
625-2436

I will be contacting you soon to discuss the study in more detail and to explain our plans for a survey of City contracting activities. I know that you will give our staff the necessary cooperation to conduct this study as efficiently as possible. If you have any questions, please do not hesitate to call me at 625-2465.

Jonathan Whetzel  
Chairman  
Utilities Committee  
625-2443

John R. Miller  
Chairman  
Parks & Public  
Grounds Committee  
625-2451

Sincerely,

Randy Revelle  
Chairman  
Public Safety & Justice  
Committee  
625-2445

*Lauraine D. Brekke*  
Lauraine D. Brekke  
Director, Legislative Audits

Jeanette Williams  
Chairman  
Human Resources &  
Operations Committee  
625-2453

LB:SK:rp

BPM

PAUL A. WIATRAK, CITY ENGINEER

Re: Amendment  
to Sworn  
Statement  
re 90 Min. +  
Women

Board of Public Works  
Office of the Executive Secretary  
Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP 2/23/78  
(date)

ALL BOARD MEMBERS

(referred to)

Betty L. McFarlane, Executive Secretary *Blm*  
(referred by)

ROUTING	DATE	INITIAL
ACTION		
FEM/DR		
FILE		/
INFORMATION		
Paw		

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: The attached is forwarded for your review and comments.

\*Action requested no later than 3/6/78  
(date)

Copy: Human Rights Dept

SEATTLE ENG DEPT  
FEB 23 1 44 PM '78

Your  
Seattle  
Human Rights Department



Vivian L. Caver, Director  
~~Wes Uhlmann, Mayor~~

Charles Royer, Mayor  
February 21, 1978

MEMO

TO: Betty McFarlane, Executive Secretary  
Board of Public Works

FROM: Roberta D. Standifer, <sup>1/25</sup> Interim Supervisor Contract Compliance  
Human Rights Department

SUBJ: Sworn Statement

Attached is the revised Sworn Statement that was discussed with you by Willie Winston earlier this year. The revisions take place in paragraph two (2) adding women and paragraph one (1) changes in percentages for both minorities and women.

Would you kindly circulate among the BPW members for comments. Hopefully, we will be able to put into operation by April 1, 1978.

If you have any questions please call 4381.

RDS/gb

EQUAL EMPLOYMENT OPPORTUNITY  
TRI. E-2

SWORN STATEMENT FOR COMPLIANCE WITH  
SECTION 4, ORDINANCE 101432

State of Washington )  
County of King ) ss.

The Undersigned, being first duly sworn, on oath states on behalf of the Bidder as follows:

A. Bidder has given or will, prior to the commencement of work, give notice to supervisors and other employees and subcontractors of the terms of the Affirmative Action to be undertaken.

B. Bidders hereby designates \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

as the person who has been charged with the responsibility for securing compliance with the reporting progress on the affirmative actions taken.

C. Bidder will cooperate fully with the Seattle Department of Human Rights while making every "good faith" effort to comply with the Affirmative Action requirements set forth in this sworn statement and in Ordinance 101432. The Seattle Department of Human Rights will be kept fully informed in writing of all the Bidder's affirmative action taken during the contract's term and of any refusals by unions or others to cooperate with the contractor's Affirmative Action Plan.

D. Bidder will ensure that equal opportunity of employment for minorities and women results during the term of this contract by taking the following affirmative actions:

1. Take every possible measure to maintain at all levels of workforce and management, minority and female employment ratios of not less than indicated in the following schedule:

<u>YEAR</u>	<u>MINORITIES</u>	<u>WOMEN</u>
1978	17.8%	14%
1979	18.4%	16%
1980	19.0%	18%

2. Seek out and negotiate with minority and female contractors to receive subcontract awards, and submit a list of those minority and female contractors solicited, with Bid.

EQUAL EMPLOYMENT OPPORTUNITY

SWORN STATEMENT (Continued)

- 3. Notify organizations that are active in equal employment opportunities of positions available, in writing, and send a copy to the Seattle Department of Human Rights. A list of such organizations is available from the Seattle Department of Human Rights.
  - 4. Make continuing recruitment efforts with organizations, schools, and/or training organizations concerned with employment of minorities and women.
  - 5. Notify present employees of new positions and vacancies and encourage them to recruit minorities and women for those positions.
  - 6. Provide on-the-job or other training opportunities to minimally qualified minority and female job applicants who can with such training become satisfactory employees.
  - 7. Provide opportunity for training and advancement for minorities and women in pre-apprentice, apprentice, journeyman, and all other positions with contractor and subcontractors employed on the project.
  - 8. Provide equal employment opportunity for after-school and summer employment for minority and female young persons.
- E. In the event that bidder already has an affirmative action plan which meets the requirements of Section D above, such plan may, upon approval of the Seattle Department of Human Rights, be submitted in lieu of implementing Section D.

\_\_\_\_\_ Bidder \_\_\_\_\_ Company Name  
 Phone Number \_\_\_\_\_ Company Address  
 By \_\_\_\_\_ Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 Notary Public in and for the State of Washington \_\_\_\_\_  
 \_\_\_\_\_ residing at \_\_\_\_\_.

Box

PAUL A. WIATRAK, CITY ENGINEER

Seattle Board of Public Works

Betty L. McFarlane, Executive Secretary  
Charles Royer, Mayor



Re: Ordinances Relating to Board of Public Works

February 14, 1978

Honorable Charles Royer  
Mayor  
City of Seattle

Dear Mayor Royer:

Thank you for the copy of your communication to Mrs. Lamphere relative to drafting a new Board of Public Works Ordinance.

You mentioned that the City Attorney could identify existing ordinances which may need modification to conform with a new Board of Public Works. We have made a list of ordinances which apply to the Board; and, hopefully, it will assist you in this effort. It is not a total list, and the City Attorney can provide any other ordinances which we do not have on file. Also attached is a copy of the Board's procedures, Rules and Regulations which pertain to public works administration and management of the public streets.

If we can be of further assistance, please advise.

Respectfully,

BOARD OF PUBLIC WORKS

*Betty L. McFarlane*

Betty L. McFarlane  
Executive Secretary

BLN/jw

Att.  
cc: Bob Royer  
Dick Kelly  
City Attorney's Office  
Board of Public Works Members  
O.N.B.

ROUTING	DATE	INITIAL
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FILE		✓
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<i>(Law)</i>		

SEATTLE ENG DEPT  
FEB 15 10 24 AM '78

BPM

# Your City, Seattle

Office of the Mayor  
Charles Royer, Mayor



SEATTLE ENG DEPT  
FEB 10 10 27 AM '78

ROUTING	DATE	INITIAL
ACTION		
FILE		✓
INFORMATION		
		<i>Paul</i>
		<i>H. Staff</i>

✓ February 9, 1978

The Honorable Phyllis Lamphere  
President  
City Council

Dear Mrs. Lamphere:

There are two elements which are essential for a comprehensive review of our personnel system and the drafting and implementation of an effective ordinance. The first is a considerable amount of input from city employees and other citizens. The second element is cooperation between the Executive and the Council in the actual process of drafting the ordinance.

The drafting of this ordinance is one of the most important projects for the city this year, and one to which we should be willing to commit the necessary resources.

I believe we should begin the process by assembling a representative committee of employees and other citizens to give general direction to the drafters of the ordinance. Former Mayor Uhlman and I discussed such a committee and agreed that Brewster Denny, Dean of the Graduate School of Public Affairs at the University of Washington, would be an excellent choice to help formulate and advise such a committee. Since the representative nature of the committee is so important, I believe a number of individuals and bodies must be involved in the process. Therefore, I will ask three representatives of employee groups and/or unions to serve on the committee and will appoint three members from the general public. In addition, I will ask the Civil Service Commission to appoint one member of the committee; the Municipal League to appoint one member of the committee; the League of Women Voters to appoint one member of the committee; the chairpersons of the King County Democratic and Republican Party organizations to appoint one member of the committee each; and the Seattle Management Association to appoint one member of the committee. If the Council is willing, I would also urge them to appoint three additional members to this committee. Once it is assembled, I will ask the committee to meet in a number of public sessions between February 15th and the end of March, and to receive both written and oral suggestions from any citizen who wishes to

*Copy: City Personnel Ofc*

The Honorable Phyllis Lamphere  
February 9, 1978  
page two

submit them. The committee will not be asked or intended to draft an ordinance; rather its function will be to determine factors and perceived problems which the drafting group should take into account in working on the ordinance.

By March 31st, the citizens committee will be expected to deliver a summary of all the testimony they have received to a drafting group to be made up of myself or my designee, the Council President or her designee and the Personnel Director or his designee. This group of three will meet as often as necessary, chaired by my designee, and will involve City department personnel and the Rights agencies and outside resources to the extent needed to draft an ordinance. That ordinance will be submitted to the Council by August 1st.

We must be realistic about the amount of work involved in this undertaking. The Personnel Department does not have all of the resources it needs to staff the work to be done by the citizens and drafting committees. I therefore suggest that the Council create two temporary positions to support those groups, funded through salary savings. The first would be a research coordinator for the project; the second would be a clerical person. In addition, I suggest that the Council ask the City Attorney if his office presently can provide the many hours of legal staffing which will be necessary to deal with the myriad questions raised in the drafting process. If not, it seems appropriate to allocate additional resources to the City Attorney for this purpose.

Charter Amendment No. 1, revising Articles III and VII, requires that by November 8 we enact an ordinance setting out the functions of a new Board of Public Works. We must also decide which departments would be established or reestablished, since the Amendment abolished several charter-mandated divisions of the City.

I believe the process for writing an ordinance implementing the new Board of Public Works Article can be simple and speedy.

I do not plan to propose any large scale reorganization of city departments in the near future, but I may present changes within a year. Therefore a simple, straight forward ordinance establishing a Board of Public Works and reestablishing existing departments should suffice. The legislation need not be elaborate -- it should outline the contracting functions of

The Honorable Phyllis Lamphere  
February 9, 1978  
page three

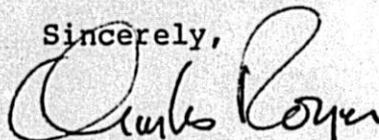
the Board and any other responsibilities that would be sensibly placed in the Board; departments can be created by ordinances like the one forming Seattle Center as an agency. We must also modify certain ordinances relating to the duties of the department heads.

The new Board of Public Works law can be researched, drafted and presented to the Council by May 1, if we proceed by the following approach: by March 1, OMB can complete a review of the Board's functions and suggest appropriate changes and staffing. At the same time, an assistant City Attorney could identify ordinances that should be modified to conform with a new Board of Public Works law. During March and April, a working committee of one Mayor's staff, one Council staff and one OMB person could review the OMB recommendations and draft legislation with the aid of the City Attorney's office. The ordinance or ordinances can be submitted to the Council in May.

Because I do not foresee any major reorganization of departments through this process, a complex approach is unnecessary. The timetable I outlined above should carry out the requirements of Charter Amendment No. 1 efficiently and effectively.

I look forward to working with you in both of these matters, and I believe this process will produce model ordinances of which all Seattle can be proud.

Sincerely,



Charles Royer

CR:rkj

cc: All Councilmembers  
Board of Public Works Members  
City Attorney  
Director, Personnel  
Director, Office of Management and Budget  
Dean Brewster Denny  
Chairperson, Civil Service Commission

BFW

PAUL WIATRAK, CITY ENGINEER

THE CITY OF SEATTLE  
BOARD OF PUBLIC WORKS  
DEPARTMENT

M E M O R A N D U M

February 7, 1978

To: All Board of Public Works Members  
From: Betty L. McFarlane, Executive Secretary *Blm*  
Re: Submittal of Agenda Items

Please be advised, due to the two holiday weekends in the month of February, submittal of agenda items shall be as follows:

<u>Board of Public Works Meeting Date</u>	<u>Agenda Submittal Deadline</u>
February 15, 1978	Friday, February 10 - 5:00 p.m.
February 22, 1978	Friday, February 17 - 5:00 p.m.

Thank you.

BLM:djk

cc: John Skommesa, Engineering  
Doug Howell, Engineering  
Evelyn Larson, Parks  
Bill Rashkov, Water  
John Hansen, Lighting  
R. L. Snyder, Building  
Chuck Hennebry, Building

SEATTLE ENG DEPT  
FEB 8 9 51 AM '78

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INFORMATION		
<i>Paul</i>		
<i>M Staff</i>		

BPW

PAUL A. WIATRAC, CITY ENGINEER

Board of Public Works  
Office of the Executive Secretary  
Betty L. McFarlane, Executive Secretary

Re: Proposal from Consultant to assist in drafting BPW Ord.

DEPARTMENTAL ROUTING SLIP

2/3/78  
(date)

All BPW Members  
(referred to)

Blm  
(referred by)

\_\_\_\_ Please prepare reply for the Executive Secretary's signature on office stationery.

\_\_\_\_ Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

X Forwarded for your investigation, report, and recommendation.

\_\_\_\_ Forwarded for your information and files.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*Action requested no later than

Pls Rush  
(date)

by 2/9/78

Copy: Consultants

ROUTING	DATE	INITIAL
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EMW		
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Paw		

SEATTLE ENG DEPT  
FEB 6 10 08 AM '78

Mayor's Office  
~~Wes Uhlman~~ Mayor

2-2-78

(DATE)

INTER DEPARTMENTAL ROUTING SLIP  
INTRA

Dir of Pub Wks

(REFERRED TO)

AA

(REFERRED BY)

RE: DOUGLAS L. JONAS

(NAME)

2-2-78 (17)

(DATE & REF. NO.)

(ADDRESS)

Subject: SUBSTANTIAL CHANGE IN CITY  
GOVIT

- Please prepare reply for the Mayor's signature.  
 Draft form     Black Seal     Gold Seal
- Please reply to the attached letter for the Mayor, showing a copy to the Mayor
- Please supply me with the facts involved in the attached letter.
- For review.
- For comment.
- Please do the following and report back to me by 2-14-78:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please return this slip with completed work.

**JONAS & ASSOCIATES**  
CONSULTANTS IN MANAGEMENT

POST OFFICE BOX 10455  
BAIRBRIDGE ISLAND  
WASHINGTON 98110  
(206) 842-4188  
OR  
(206) 624-3543

January 26, 1978

Mayor Charles Royer  
1200 Municipal Building  
Seattle, Washington 98104

*Ad. of Public Works*  
*FR*

Dear Mayor Royer:

Substantial change is under way in Seattle city government. Foremost among the changes has been your coming to office. Assignments within the City Council have been juggled and the complexion changed somewhat. Several charter changes were approved by the voters, among them a change in the long standing charter provisions and way of doing business in the departments related to the Board of Public Works. I am among the many who believe you will lead the City through these changes in a very positive way. I am probably also among the many who are writing to you at this time desiring to sell you professional services that would assist you and city government during this time of change. However, I am hopeful that my own background will be uniquely suited to a particular opportunity to make a wise and long lasting change at this time. *cc: Bob*

I write particularly in regard to the new opportunities in the management of public works related activities. Potentially significant and long lasting changes in the manner of managing public works are possible at this time; some could be highly visible, most would be fundamentally important to improved management and responsiveness, but unobtrusive to the public as a whole. Although the long established Board of Public Works and departmental distribution of public works functions has seemingly been very effective and graft free over the long run, the rationale for change has been to improve responsiveness and adaptability of public works to the dynamics of public attitudes and priorities as expressed through elected officials. Similarly, it would seem there has been an expressed desire to improve the ability of the mayor to manage the diverse activities of public works through more direct control.

The opportunity for change now goes beyond the obvious changes brought at the ballot box. You yourself have indicated a desire to draw on the experience and knowledge of the "gray heads" around city government. It is well known that most people find change very difficult; but the best and most likely time to have change accepted and get bonafide participation in the planning for it from experienced people comes at a time like this when there is a heavy expectancy of

change. The challenge will be to make any changes in the direction of public works management by mixing objective analysis with participative inputs from several sectors. Inputs from many vantage points are needed, not the least of which would be your own intended management style. Public works goals perceived to be of primary importance over the next four to eight years must be considered. The most successful of management practices in the public works and (comparable) private sector must also be built in to the process. A very important input to planning improved management should come from present staff. It has been my thought that you may be desiring assistance in organizing for maximum public works effectiveness under the latitude of recent charter changes.

Jonas & Associates is perhaps uniquely qualified to help in this type of circumstance. Very briefly, my own background and experience springs from a degree in Civil Engineering and a Masters Degree in Management followed by 11 years experience with the City of Seattle where I served as Assistant City Engineer for Management and Planning. Almost 5 years ago I left to establish a management consulting practice. During that time Jonas and Associates has had a widely varied practice involving all levels of government and some experience in the private sector. We have consulted on organization, management information systems, management improvement and development with the cities of Portland, Vancouver, Bellingham, and the Seattle Engineering, Water, and Parks Departments and Clark County. We have also worked on engagements for the State Department of Transportation (SDOT), the State Department of Ecology (DOE) and the State Legislature. The SDOT job involved working with local government public works agencies to develop administrative guidelines for Federal highway funds for all local governments; and the DOE job involved working with officials representing 27 city and county governments to develop coastal zone management concepts. In the public works area we have also lead a number of seminars for public works personnel; next month I will lead a management retreat for the public works officials of the State of Oregon. I remain personally active in the American Public Works Association, The American Society of Civil Engineers, and serve on the national committee on Manpower Management of the Transportation Research Board. In short, Jonas & Associates has a degree of experience specifically dealing with municipal public works activities, that would be difficult for most management consultants to match.

While some might fear a bias stemming from 11 years with the Seattle Engineering Department, this has been offset by more recent experience with other City of Seattle departments and very thorough knowledge and experience in a wide variety of other public works related organizations. While with the City, I prided myself and believe I was regarded by others, as an independent thinker; and perhaps the very act of leaving to start my own consulting practice is a reflection of that. Also, the positive side of the prior experience is that it places me well up on the learning curve regarding practices, traditions, obstacles to effective management, and so on, in Seattle City Government. We would also like to believe that city employees may be more open to accepting our conclusions and recommendations, based on familiarity with us, and as a practical matter acceptance by them will be required to ultimately successfully implement any recommended changes.

Jonas & Associates has a mode of operation which is to remain as a very small firm, and through continuing association with a number of other independent consultants and portions of larger firms to form a team of professionals specifically brought together for the particular requirements of each engagement. By this means we are able to support virtually any management objective and typically serve in one of 3 areas: (1) providing consultation to management in the traditional consulting role; (2) developing and supporting implementation of entire new management systems in an organization and (3) serving as a source of extra management manpower where the capability exists in-house but not the time to deal with the one time management project.

Recognizing this letter to be unsolicited, we have kept our statement of qualifications brief; but if you see any potentialities whatsoever in the gist of these thoughts, we would be most anxious to meet with you or your representative to develop the ideas more completely. We could respond to thinking regarding public works management by you and your staff with a specific proposed scope of work, study format, and work schedule. The first real possibility in many years to make comprehensive improvements in public works management exists now, and any changes made now are likely to be the pattern for many years to come.

Very truly yours,

*Douglas L. Jonas*

Douglas L. Jonas, P.E.  
Jonas & Associates

DLJ:avd

BPMW

1/25

✓ January 25, 1978

Honorable Board of Public Works  
City of Seattle  
Seattle, Washington 98104

Gentlemen:

Mr. W. E. P. Smith, my alternate to the Board of Public Works, is scheduled for retirement on January 31st of this year. Please designate Mr. Edwin M. Whiting, Mr. Smith's replacement, as my new alternate to the Board.

Very truly yours,

*Paul A. Wiatrak*

PAUL A. WIATRAC, P. E.  
City Engineer

PAW:bl  
cc: M-Staff

Information	
Concurrence Prior to Signature	
<i>WEP</i>	
<i>WEPS</i>	<i>1/25</i>
<i>CEB</i>	<i>1/25</i>

BPW

PAUL WIATRAK, CITY ENGINEER

Re: Amendment  
No 1 - BPW

Board of Public Works  
Office of the Executive Secretary

Betty L. McFarlane, Executive Secretary

DEPARTMENTAL ROUTING SLIP 1/17/78  
(date)

All BPW members  
(referred to)

Blm  
(referred by)

Please prepare reply for the Executive Secretary's signature on office stationery.

Please reply to the attached letter for the Executive Secretary showing a copy to the Executive Secretary.

Forwarded for your investigation, report, and recommendation.

Forwarded for your information and files.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*Action requested no later than \_\_\_\_\_  
(date)

Copy: City Personnel Ofc

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SEATTLE ENG DEPT  
JAN 18 7 56 AM '78

# Seattle City Council



Sari Smith  
President of the Council  
625-2455

George E. Benson  
Chairman  
Transportation  
Committee  
625-2441

Tim Hill  
Chairman  
Finance Committee  
625-2438

Paul Kraabel  
Chairman  
Planning & Urban  
Development Committee  
625-2447

Phyllis Lamphere  
Chairman  
Intergovernmental  
Relations Committee  
625-2435

Jonathan Whetzel  
Chairman  
Utilities Committee  
625-2443

John R. Miller  
Chairman  
Parks & Public  
Grounds Committee  
625-2451

Randy Revelle  
Chairman  
Public Safety & Justice  
Committee  
625-2445

Jeanette Williams  
Chairman  
Human Resources &  
Operations Committee  
625-2453

January 13, 1978

Honorable Charles Royer  
Mayor  
City of Seattle

Dear Mayor Royer:

The voters of the City of Seattle on November 8 ratified certain amendments to the City Charter. Two of these amendments require the Mayor and City Council to adopt ordinances implementing their provisions before November 8, 1978 -- Amendment No. 1 regarding the Board of Public Works, and Amendment No. 5 regarding the Personnel/Civil Service System.

Since the development of these ordinances will require a substantial amount of time, the City Council is interested in proceeding as quickly as possible on the drafting process. The fundamental changes involving lines of authority and accountability within City government will raise many policy issues and require a sensitive decision making process. In addition, there are a substantial number of groups and individuals, including City employees, who will be affected by these ordinances, and whose viewpoints must be carefully considered.

In the interest of cooperation and efficiency, the City Council would suggest a joint effort to develop initial drafts of the ordinances, so that we and other interested people have something concrete to work with. Specifically, we propose two staff teams, one to develop the Personnel/Civil Service ordinance, and the other to develop the Board of Public Works ordinance. Each team would be composed of three individuals: one staff member from the Executive Department (perhaps from the Office of Management and Budget, and/or Office of Personnel), one member from the Law Department, and one staff member from the City Council.

The staff teams would report regularly to the Mayor and two panels, each panel consisting of three specially designated City Council members. One panel would review the work of the task force on the Personnel/Civil Service System, and the other would review the work of the task force on the Board of Public Works. In addition, the teams would seek the early advice of concerned parties -- such as City employees, former Freeholders, and Board of Public Works members -- via written comments on draft ordinance sections and recorded testimony in quasi-hearing format.

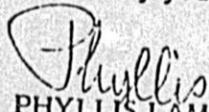
Honorable Charles Royer  
January 13, 1978  
Page Two

Each staff team, in consultation with the Mayor and Council review panels, would ultimately produce an initial draft of an implementing ordinance. Each ordinance would then be introduced in the City Council and referred to Committee of the Whole. Thereafter, the normal process of consideration and public hearing on proposed ordinances would be followed.

As indicated above, it is essential that we adhere strictly to a timetable in developing these ordinances. We propose that the staff teams be appointed and begin work by February 1. The initial drafts of the two ordinances should be completed and ready for introduction in the City Council by July 1. Public hearings should be scheduled for August, with final adoption by the City Council and approval by the Mayor in September.

We suggest that the process set forth above be included in the draft Policy Planning Agenda which you are preparing through the Office of Policy Planning, and be discussed and tentatively approved by you and us at the City Council retreat on January 28.

Very truly yours,

  
PHYLLIS LAMPHERE, President  
Seattle City Council

PL/tw:ga

cc: Members, Seattle City Council  
Members, Board of Public Works  
Barbara Dingfield, Director, Office of Policy Planning  
Director, Office of Personnel  
Director, Office of Management and Budget